



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

JUN 18 2010

REPLY TO THE ATTENTION OF:  
(AE-17J)

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Frank Murray  
Vice President and General Manager  
Heritage-WTI, Inc.  
1250 St. George Street  
East Liverpool, Ohio 43920-3400

Re: Finding of Violation  
Heritage-WTI, Inc., East Liverpool, Ohio

Dear Mr. Murray:

This letter advises you that the U.S. Environmental Protection Agency (or we) has determined that the hazardous waste incinerator at Heritage-WTI, Inc.'s facility at 1250 St. George Street, East Liverpool, Ohio (WTI) has violated the Clean Air Act (CAA) and the National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors, 40 C.F.R. 63, Subpart EEE (HWC MACT). We have provided a list of the requirements violated below. We are today issuing to you a Finding of Violation (FOV) for these violations.

Section 112(d) of the CAA requires the EPA Administrator to promulgate regulations establishing emission standards for each category or subcategory of major sources and area sources of hazardous air pollutants (HAPs) listed for regulation pursuant to Section 112(c) of this section. On July 16, 1992, EPA published an initial list of categories of major and area sources of HAPs. See 57 FR 31576. The list included, among other things, hazardous waste incineration. On September 30, 1999, EPA promulgated the HWC MACT to protect public health and the environment.<sup>1</sup>

The HWC MACT includes the following requirements:

- 1) The owner or operator of a hazardous waste incinerator equipped with a waste heat boiler must not discharge or cause combustion gases to be emitted into the atmosphere that contain dioxins and furans in excess of 0.20 nanogram toxic equivalent per dry standard

<sup>1</sup> EPA amended the HWC MACT on November 19, 1999, July 10, 2000, November 9, 2000, May 14, 2001, July 3, 2001, December 6, 2001, February 13, 2002, February 14, 2002, December 19, 2002, April 9, 2004, June 23, 2003, October 12, 2005, April 20, 2006, October 25, 2006, April 8, 2008, and October 28, 2008.

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cubic meter, corrected to 7 percent oxygen. WTI's Title V permit incorporates this limit. 2,3,7,8-tetrachlorodibenzo-para-dioxin (2,3,7,8-TCDD) causes chloracne in humans, a severe acne-like condition. It is known to be a developmental toxicant in animals, causing skeletal deformities, kidney defects, and weakened immune responses in the offspring of animals exposed to 2,3,7,8-TCDD during pregnancy. EPA has classified 2,3,7,8-TCDD as a probable human carcinogen (Group B2).

- 2) The owner or operator of a hazardous waste incinerator must not discharge or cause combustion gases to be emitted into the atmosphere that contain mercury in excess of 130 micrograms per dry standard cubic meter, corrected to 7 percent oxygen. WTI's Title V permit incorporates this limit. Acute exposure to high levels of elemental mercury in humans results in central nervous system (CNS) effects such as tremors, mood changes, and slowed sensory and motor nerve function. Chronic exposure to elemental mercury in humans also affects the CNS, with effects such as erethism (increased excitability), irritability, excessive shyness, and tremors.

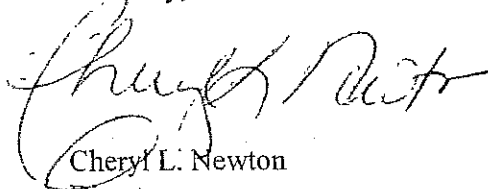
EPA finds that the WTI facility has violated the above listed HWC MACT requirements as incorporated into the WTI's Title V permit. Because WTI violated its Title V permit, you have also violated Title V of the CAA and its associated regulations which require compliance with the terms and conditions of Title V permits.

Section 113 of the CAA gives EPA several enforcement options. These options include issuing an administrative compliance order, issuing an administrative penalty order, bringing a judicial civil action, and bringing a judicial criminal action.

We are offering you an opportunity to confer with us about the violations alleged in the FOV. This conference will provide you a chance to present information on the identified violations, any efforts you have taken to comply, and the steps you will take to prevent future violations. Please plan for your facility's technical and management personnel to take part in these discussions. You may have an attorney represent and accompany you at this conference.

The EPA contact in this matter is Charles Hall. You may call him at (312) 353-3443. If you wish to request a conference, you should do so within 3 business days following receipt of this FOV. EPA hopes that this FOV will encourage WTI's compliance with the requirements of the Clean Air Act.

Sincerely,



Cheryl L. Newton  
Director

Air and Radiation Division

Enclosure

EPA-R5ORC-AE2010-404

Enclosure

cc: Robert Hodanbosi, Ohio Environmental Protection Agency

Edward Fasko, Northeast District Office  
Ohio Environmental Protection Agency

EPA-R5ORC-AE2010-405

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

|  |   |                      |
|--|---|----------------------|
| IN THE MATTER OF:                          | ) | FINDING OF VIOLATION |
|  | ) |                      |
| Heritage-WTI, Inc.                         | ) | EPA-5-10-OH-16       |
| East Liverpool, Ohio                       | ) |                      |
|  | ) |                      |
| Proceedings pursuant to the Clean Air Act, | ) |                      |
| <u>42 U.S.C. §§ 7401 et seq.</u>           | ) |                      |

**FINDING OF VIOLATION**

Heritage-WTI, Inc. (WTI or you) owns and operates a hazardous waste incinerator at WTI's facility at 1250 St. George Street, East Liverpool, Ohio (Facility).

The U.S. Environmental Protection Agency is sending this Finding of Violation (FOV) to you for violation of 40 C.F.R. §§ 63.1219(a)(1)(i)(A) and 63.1219(a)(2) as set forth in the National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors (hereinafter, the HWC MACT) at the Facility since May 11, 2010. The underlying statutory and regulatory requirements include provisions of the Clean Air Act (CAA) and the HWC MACT.

Section 113 of the CAA provides you with the opportunity to request a conference with us to discuss the violations alleged in the FOV. This conference will provide you a chance to present information on the identified violations, any efforts you have taken to comply, and the steps you will take to prevent future violations. Please plan for the Facility's technical and management personnel to take part in these discussions. You may have an attorney represent and accompany you at this conference.

**Explanation of Violations**

The following provides a description of the regulations WTI violated and how WTI violated them:

1. Pursuant to 40 C.F.R. § 63.1219(a)(1)(i)(A), the owner or operator of a hazardous waste incinerator equipped with a waste heat boiler must not discharge or cause combustion gases to be emitted into the atmosphere that contain dioxins and furans in excess of 0.20 nanogram toxic equivalent per dry standard cubic meter, corrected to 7 percent oxygen (ng TEQ/dscm @ 7% O<sub>2</sub>).
2. Pursuant to 40 C.F.R. § 63.1219(a)(2), the owner or operator of a hazardous waste incinerator must not discharge or cause combustion gases to be emitted into the atmosphere that contain mercury in excess of 130 micrograms per dry standard cubic meter, corrected to 7 percent oxygen (µg/dscm @ 7% O<sub>2</sub>).

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3. Pursuant to 40 C.F.R. § 63.1206(a)(1)(ii)(A), the owner or operator of an existing hazardous waste incinerator was required to comply with the emission standards under 40 C.F.R. § 63.1219 and the other requirements of that subpart no later than the compliance date, October 14, 2008, unless the Administrator granted you an extension of time under § 63.6(i) or § 63.1213.
4. Neither EPA nor the Ohio Environmental Protection Agency granted to WTI an extension of time under 40 C.F.R. § 63.6(i) or § 63.1213.
5. The hazardous waste incinerator at the Facility is equipped with a waste heat boiler and is an existing facility within the meaning of the HWC MACT.
6. On March 30 and 31, April 1 and 2, and May 11 and 12, 2010, WTI conducted a comprehensive performance test (CPT) on the hazardous waste incinerator at the Facility as required by 40 C.F.R. § 63.1207.
7. As part of the CPT, on May 11 and 12, 2010, WTI conducted a dioxin/furan performance test using EPA Publication SW-846 Method 0023A. The average dioxin/furan emission concentration during the CPT was 0.518 ng TEQ/dscm @ 7% O<sub>2</sub>.
8. As part of the CPT, on May 11, 2010, WTI conducted a metals performance test using Reference Method 29 in 40 C.F.R. 60, Appendix A (RM29). The average mercury emission concentration during the CPT was 290.7 µg/dscm @ 7% O<sub>2</sub>.
9. WTI violated 40 C.F.R. § 63.1219(a)(1)(i)(A) on May 11, 2010, and on any date of operation since May 11, 2010, by discharging combustion gases into the atmosphere that contained dioxins and furans in excess of 0.20 ng TEQ/dscm at 7% O<sub>2</sub> from its hazardous waste incinerator at the Facility.
10. WTI violated 40 C.F.R. § 63.1219(a)(2) on May 11, 2010, and on any date of operation since May 11, 2010, by discharging combustion gases into the atmosphere that contained mercury in excess of 130 µg/dscm @ 7% O<sub>2</sub> from its hazardous waste incinerator at the Facility.

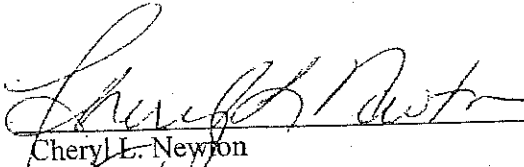
#### **Environmental Impact of Violations**

11. 2,3,7,8-tetrachlorodibenzo-para-dioxin (2,3,7,8-TCDD) causes chloracne in humans, a severe acne-like condition. It is known to be a developmental toxicant in animals, causing skeletal deformities, kidney defects, and weakened immune responses in the offspring of animals exposed to 2,3,7,8-TCDD during pregnancy. EPA has classified 2,3,7,8-TCDD as a probable human carcinogen (Group B2).

EPA-R5ORC-AE2010-407

11. Acute exposure to high levels of elemental mercury in humans results in central nervous system (CNS) effects such as tremors, mood changes, and slowed sensory and motor nerve function. Chronic exposure to elemental mercury in humans also affects the CNS, with effects such as erethism (increased excitability), irritability, excessive shyness, and tremors.

6/18/10  
Date

  
Cheryl L. Newton  
Director  
Air and Radiation Division

## CERTIFICATE OF MAILING

I, Loretta Shaffer, certify that I sent a Finding of Violation, No. EPA-5-10-OH-16, by Certified Mail, Return Receipt Requested, to:

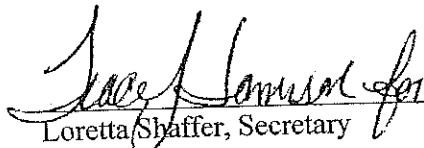
Frank Murray  
Vice President and General Manager  
Heritage-WTI, Inc.  
1250 St. George Street  
East Liverpool, Ohio 43920-3400

I also certify that I sent copies of the Finding of Violation by first class mail to:

Robert Hodanbosi, Chief  
Division of Air Pollution Control  
Ohio Environmental Protection Agency  
50 West Town Street, Suite 700  
Columbus, Ohio 43215

Ed Fasko, Air Pollution Control Supervisor  
Northeast District Office  
Ohio Environmental Protection Agency  
2110 East Aurora Road  
Twinsburg, Ohio 44087

on the 18 day of June, 2010.

  
Loretta Shaffer, Secretary  
AECAS, (MN/OH)

CERTIFIED MAIL RECEIPT NUMBER: 7009 1680 0000 7667 4126

EPA-R5ORC-AE2010-409

OPENING STATEMENT

HERITAGE-WTI, INC.

SECTION 113 CONFERENCE

June 30, 2010

This conference is being held pursuant to a request from Heritage-WTI, Inc. (WTI), following its receipt of a Finding of Violation of the Clean Air Act, 42 U.S.C. §§ 7401 et. seq. I am Bill MacDowell, Chief of the Minnesota and Ohio Section in the Air Enforcement and Compliance Assurance Branch, United States Environmental Protection Agency, Region 5, Chicago, Illinois.

Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), provides that whenever the Administrator of the EPA finds that any person has violated or is violation of any requirement of Section 112 of the Act, the Administrator may, inter alia, issue an administrative penalty order, issue an order requiring such person to comply with such requirement, or bring a civil action in accordance with Section 113(b) of the Act, 42 U.S.C. § 7413(b).

Pursuant to Sections 112(d) of the Act, 42 U.S.C. § 7412(d), on September 30, 1999, EPA promulgated the National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors at 40 C.F.R. Part 63, Subpart EEE, (hereinafter, the HWC MACT). The HWC MACT applies to, among other things, any hazardous waste incinerator.

The Administrator of EPA is charged by law with specific responsibilities to control air pollution. Section 113(a)(3) of the Clean Air Act, 42 U.S.C. § 7413(a)(3), provides that  
EPA-R5ORC-AE2010-410  
"whenever, on the basis of any information available to the

Administrator, the Administrator finds that any person has violated, or is in violation of, any other requirement or prohibition of this Title ... the Administrator may -

- "(A) Issue an Administrative Penalty Order in accordance with subsection (d),
- "(B) Issue an Order requiring such person to comply with such requirement or prohibition, [or]
- "(C) Bring a civil action in accordance with subsection (b) or Section 305...."

According to subsection (b), "the Administrator shall, as appropriate, in the case of any person which is the owner or operator of an affected source, a major emitting facility, or a major stationary source, and may, in the case of any other person, commence a civil action for a permanent or temporary injunction, or to assess and recover a civil penalty of not more than \$25,000 per day of each violation, or both,... (2) whenever such person has violated or is in violation of any other requirement or prohibition of this Title,...." Pursuant to the Debt Collection Improvement Act, for each day of violation after January 13, 2009, the United States may commence a civil action to assess and recover a civil penalty of not more than \$37,500 per day of violation.

In addition, Section 113(c) provides for possible criminal penalties or imprisonment, or both, if the violation by any person is a knowing violation and continues for more than 30 days after Finding by the Administrator under Subsection (a)(1). For purposes of Section 113(c), the term "person" expressly included, in addition to the entities referred to in Section 302(e) of the Act, any responsible corporate officer, 42 U.S.C. 7413(a)(1)(B)

On June 18, 2010, Cheryl Newton, Director, Air and Radiation

Division, Region 5, EPA, issued to WTI a Finding of Violation. The EPA sent a copy of this Finding to the State of Ohio.

The most meaningful part of today's conference will be that part which centers on the specific actions that WTI can take to ensure that it will, in the future, comply with the HWC MACT. Acceptable proposals that WTI advances in this respect today will help the EPA in determining what action it should take to best ensure that WTI will be in compliance with the law. Such a commitment to compliance must be translated into an agreed order or a consent decree, otherwise, the EPA must proceed with further enforcement action. If WTI is unwilling to commit to compliance today, the EPA must consider appropriate legal action.

This is an informal conference, not a formal hearing. The conference is designed to encourage free exchange among those present in an attempt to accomplish as much as we can today toward regulatory compliance. Any information presented at today's conference will be considered along with any other available information prior to further EPA action.

Charles Hall, Environmental Engineer, will now set forth the specifics of the Finding of Violation. Following Mr. Hall's presentation, representatives of WTI will be given an opportunity to present information bearing on the Finding of Violation, the nature of the violation, any efforts taken to achieve compliance, and the steps WTI proposes to take in the future.

EPA-R5ORC-AE2010-412

# WTI Meeting June 30, 2010

1. JOHN MATSON EPA ORC 312-886-2243

2. William MacDowell EPA-R5 312-886-6798

3. EILEEN FUREY EPA-ORC 312-886-7950

4. Charlie Hall EPA-R5 312-353-3443

5. Steve Lora Heritage-WTI 330-386-2143

6. Vince Waggle Heritage-WTI 330-386-2182

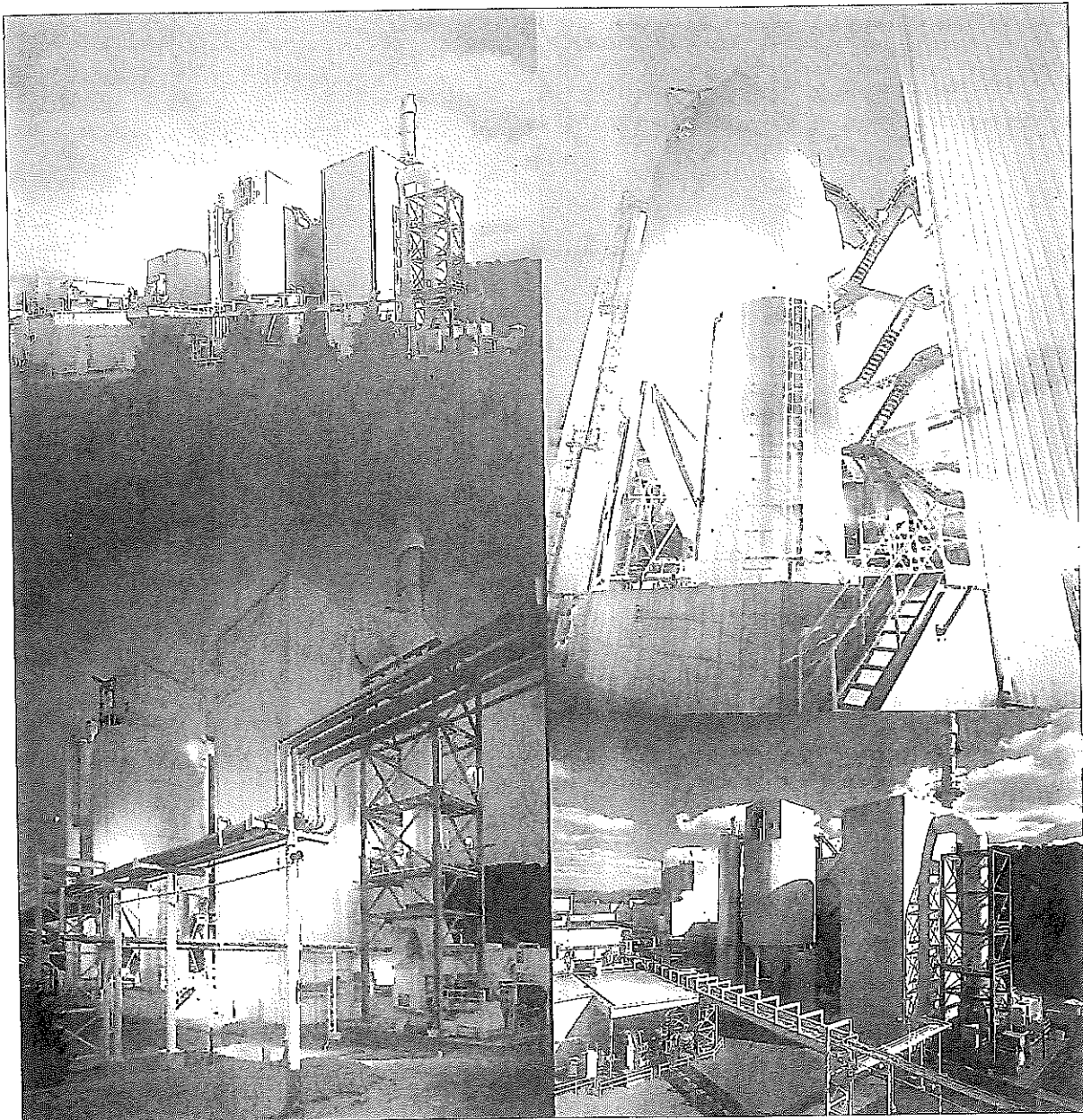
7. Carrie Beringer Heritage-WTI 330-386-2194

8. MICHAEL T. SCANLON P.A. & Consulting LLP 317/231-7387

9. JOHN PETERKA HERITAGE WTI, INC. 330-386-2122

10. Kevin Lloyd Heritage-WTI, Inc 330-386-2126

11. Frank Murray Heritage WTI, Inc 330-386-2154



ISO 14001  
ISO 9001



EPA-R5ORC-AE2010-414



## **SERVICES – MORE THAN AN INCINERATOR**

Heritage-WTI, Inc. (Trade name: WTI) provides industries, schools and government agencies with an indispensable environmental service. Through our rigorously controlled high-temperature incineration system and environmentally friendly emissions controls, we manage chemical waste that these and many other organizations generate.

Our facility, the first in the industry to earn both ISO 14001 and ISO 9001 registrations, provides about 60,000 tons of incineration capacity annually. We accept, store and treat solids and liquids in bulk, various sizes and types of drums and containers, and lab packs from schools and hospitals.

### ***Additional services***

Although treatment of chemical waste remains our core business, it no longer is our sole focus. Since operations began in 1992, we have evolved our service offerings to include non-hazardous materials, expired and damaged consumer products, industrial maintenance, mixed infectious-hazardous waste, electronic scrap and transfers of materials to a network of partner facilities. By offering an array of complementary services, we have boosted our value to customers.



*School cleanup*

## **MODERN LIFE CREATES WASTE**

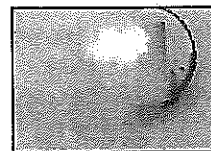
Paint, matches, moth balls, photographs and many other products that make life easier, more beautiful, or safer cannot be made without generating hazardous waste. Without proper management, this waste presents a risk to people and the environment. So we must do something - the right thing about it.

Environmental protection agencies around the world prefer to see hazardous waste disposed of by thermal treatment as an environmentally sound and reliable method of waste management. Experts agree - and can prove - that it's today's safest solution of all.

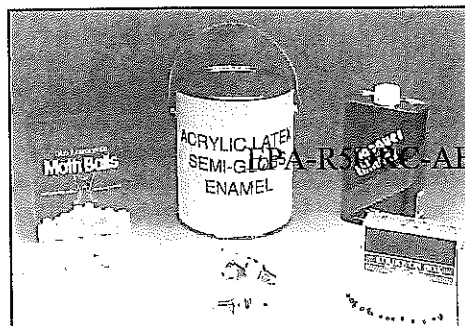
Incineration means that the potentially noxious materials in the waste are destroyed at very high temperatures. The highly controlled operation makes it possible to destroy the waste without creating risk for the environment.

Thermal treatment provides definite benefits:

- Organic compounds are destroyed.
- Hazardous waste volume is reduced.



*Kiln interior*



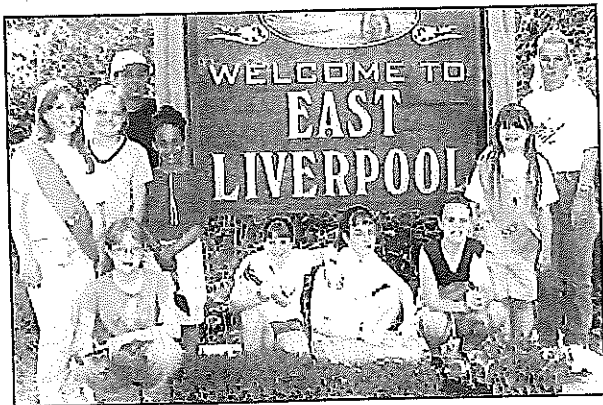
*Household products*

PA-R53RC-AE2010-415

## OUR PEOPLE MAKE THE DIFFERENCE

WTI employees do more than just operate America's leading commercial treatment facility. From coaching youth sports to serving as volunteer emergency responders and firefighters, WTI people are involved in the community.

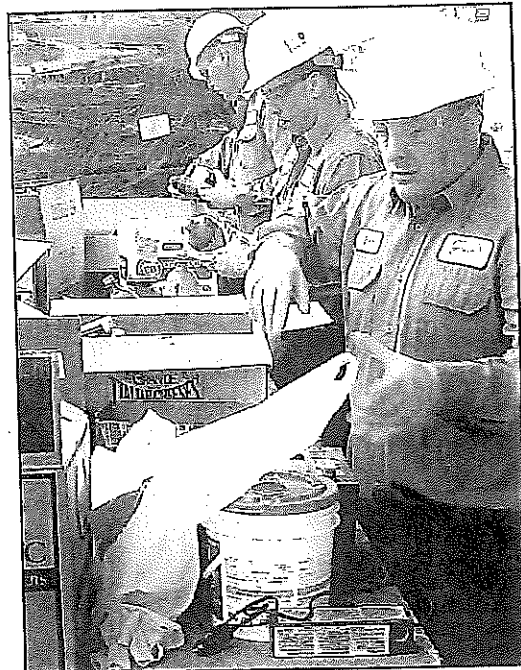
Company employees volunteer for one of East Liverpool's biggest environmental events - citySweep. Each year for Earth Day, they conduct a collection of household hazardous waste for local residents free of charge. The event has grown into a real community partnership of public and private organizations, including the City of East Liverpool.



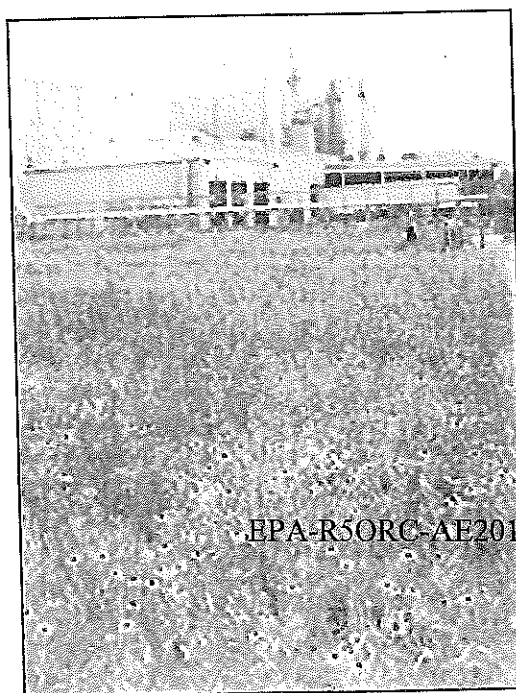
*Environmental grants*

Local non-profit and school groups participate annually in the WTI Environmental Grant Program. The company awards thousands of dollars to fund environmental projects that benefit the community and education.

WTI employees have developed a wildlife habitat on the facility's unused land. The project entails monitoring nesting boxes for birds, removing invasive plants and nurturing a meadow of native wildflowers and grasses. Their efforts have been recognized by the nationally acclaimed Wildlife Habitat Council, which has certified the site in its registry of members.



*citySweep collection*



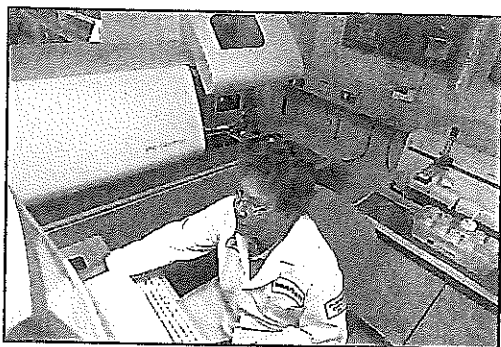
*Wildlife habitat*

EPA-R50RC-AE2010-416

## ANALYZING & ACCEPTING

### CHEMICAL ANALYSIS

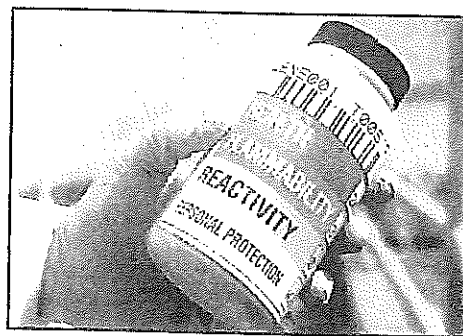
Before hazardous waste can be accepted, customers first submit a waste profile accompanied by a one-quart



*Analytical*

sample. In the plant's on-site laboratory, the sample is analyzed thoroughly for

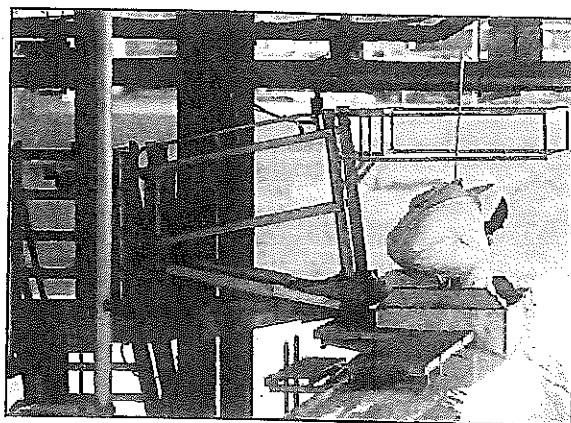
conformity with the information in the waste profile. Only when the results of the analysis correspond with both the submitted data and regulatory parameters can the waste be scheduled for shipment.



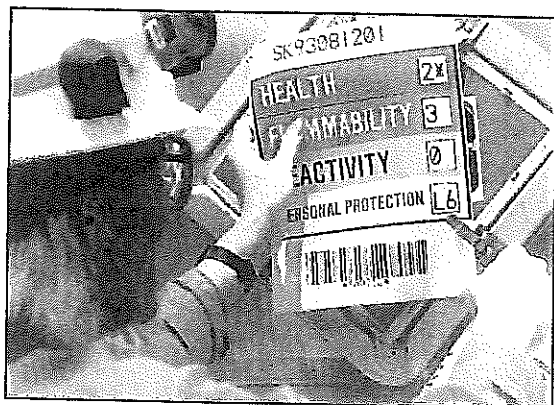
*Sample*

### ACCEPTANCE

Upon arrival, each truck's weight is recorded at the gate. Laboratory personnel obtain samples of the waste and perform another battery of tests. This second round of analyses, which serves to ensure conformity with the preacceptance profile, is called *fingerprinting*. Once accepted, the waste is placed in the appropriate storage area. After off-loading the trucks are weighed again before leaving. Calculating the difference between the gross weight and net weight of each truck makes it very easy to determine the amount of waste delivered.



*Sampling*

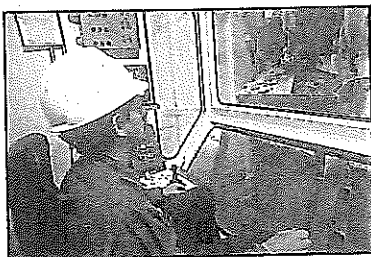


*Check in*

EPA-R5ORC-AE2010-417

## MANAGING & MONITORING

## STORING AND PROCESSING



### Bulk solids

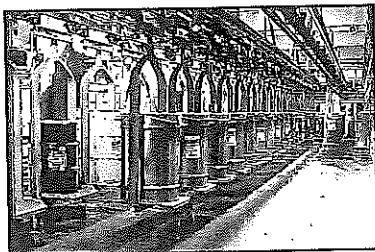
Due to differences in chemical composition, wastes are stored according to compatibility. Material may be stored up to one year prior to incineration.

*Solid waste* is deposited in two enclosed hoppers with a storage capacity of 1500 cubic yards. An overhead crane picks up the waste and feeds it into the chute leading to the rotary kiln.



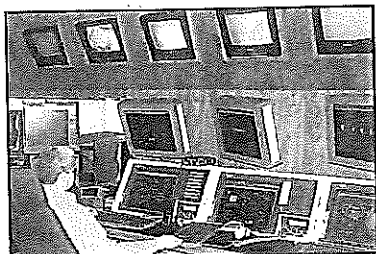
### Liquid waste storage tanks

*Liquid waste* is stored in the enclosed tank farm before being pumped to the kiln through a continuous loop feed system. The facility's 18 storage tanks have a total capacity of 284,000 gallons.



### Drum processing

*Drums and containers* are also accepted. Upon arrival each is weighed separately, registered, bar-coded and stored in the facility's drum-processing building, which is permitted to hold up to 510,000 gallons. Containerized waste is fed into the rotary kiln by an automated conveyor system.



Control Room

## SAFETY FEATURES

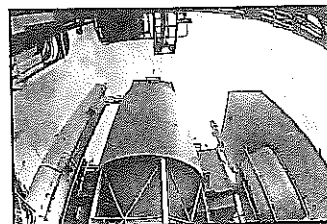
## CONTINUOUS MONITORING

WTI employs the most advanced and effective safeguards currently available to protect health and the environment. Up-to-date emissions controls represent a multimillion-dollar investment. The dividend is air emissions that are far

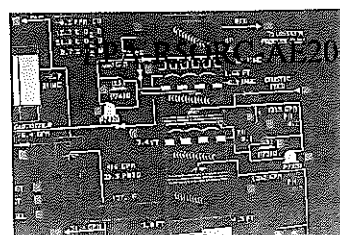
below the levels deemed safe by the U.S. and Ohio EPAs.

Computerized systems in the stack monitor air emissions continuously 24 hours a day. Regulators have on-demand access to key emissions data by way of a modem that links them to the in-stack monitors. If irregular levels of emissions are detected, the system will automatically stop feeding waste to the kiln.

These monitors and a host of other safety systems are why WTI is the industry's technology leader.

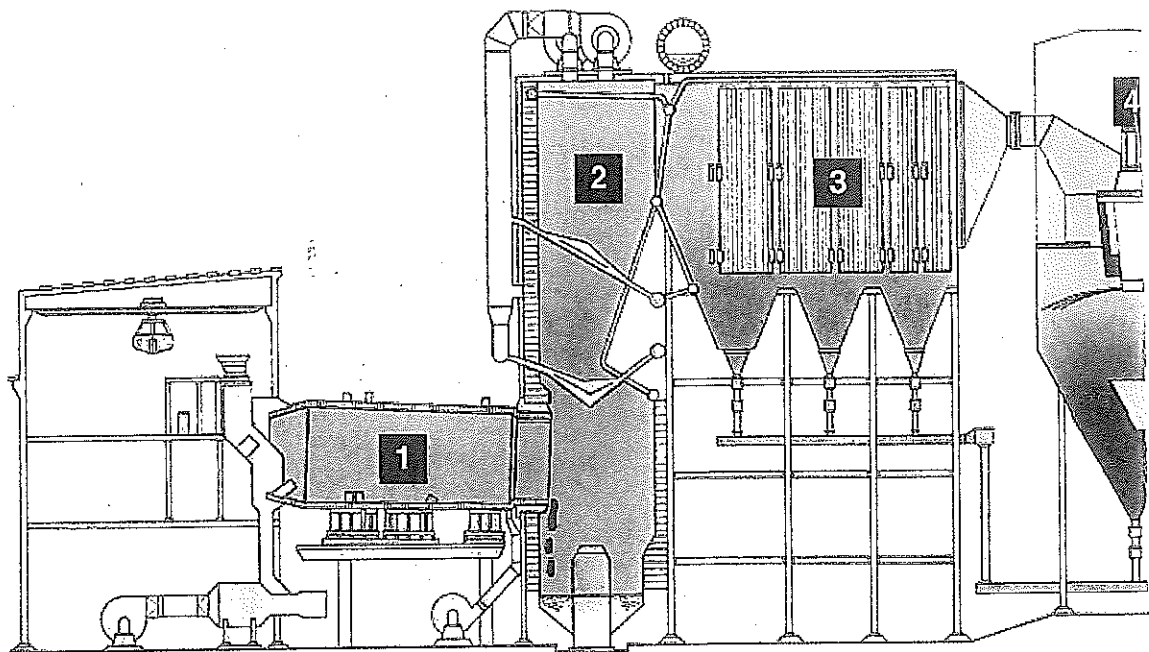


### Emissions control system



## Emissions controls

# OUR ROTARY KILN INCINE



**1 Rotary kiln** – The kiln is a refractory brick-lined steel cylinder, measuring about 43 feet long and 16.5 feet in diameter. Waste is fed into the kiln at a controlled rate through tubes called lances for pumpable materials, a chute for drums and containers, and a hopper for bulk solids. It is here where the three Ts - TIME, TEMPERATURE and TURBULENCE - come into play to incinerate hazardous organic compounds. Temperatures range between 1,800 and 2,200 degrees Fahrenheit as waste moves through the length of the rotating kiln.

**2 Secondary combustion chamber** – The exhaust from incinerated waste flows into this chamber for further combustion. Slag from the combustion process collects at the bottom of the chamber, where it's removed for shipment to an authorized hazardous waste landfill.

**3 Boiler** – The gas moves upward through the secondary combustion chamber into the boiler, which generates steam for use in the facility.

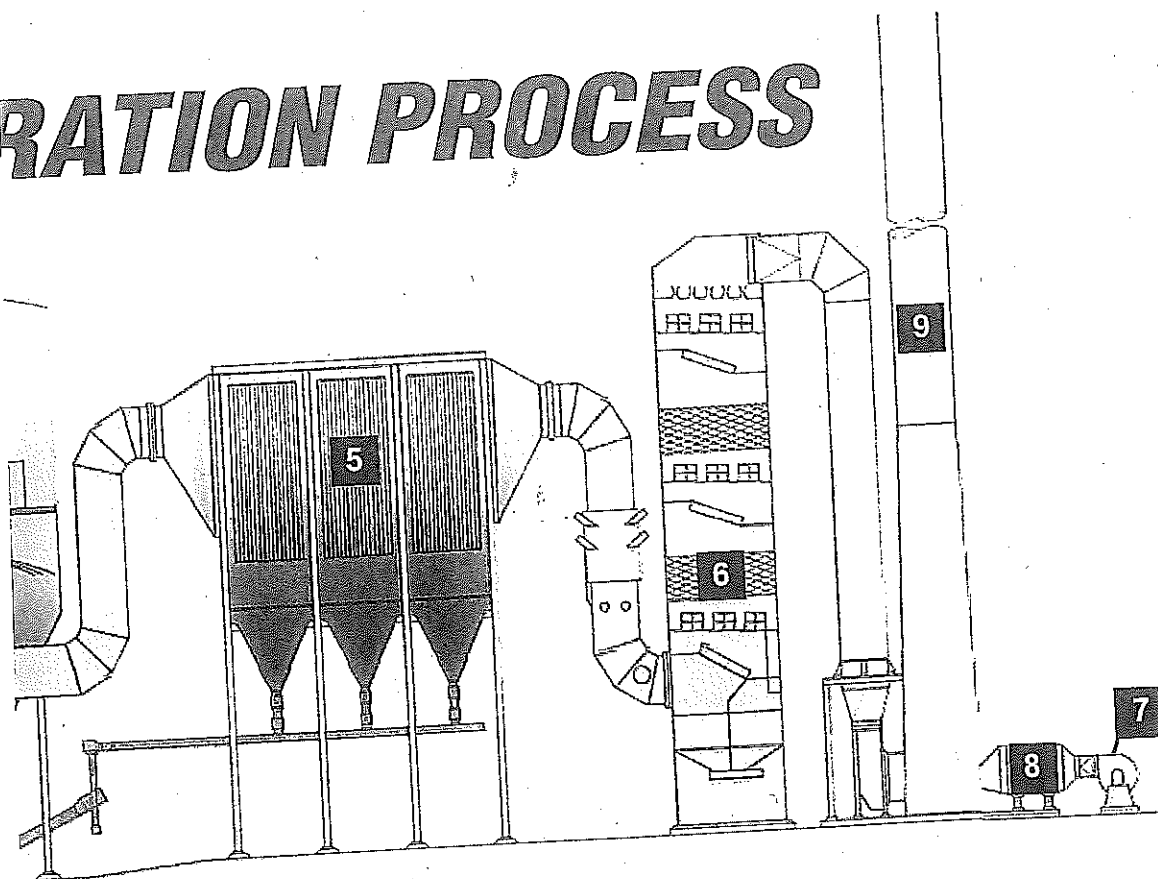
**4 Spray dryer** – From the boiler, the gas streams into this unit, where

it is cooled with jets of water. The spray dryer's cooling process generates salt, which is collected at the bottom of the unit and is also sent off-site to an authorized landfill for disposal. In addition to cooling the gas, the spray dryer completely eliminates water from the wet-scrubber process. Without the spray dryer, scrubber water would have to be collected, and like the slag from combustion, be shipped off-site for treatment and disposal.

**5 Electrostatic precipitator** – This component features three rows of electrically charged fences.

EPA-R50RC-AE2010-419

# RATION PROCESS



As the gas moves through the fences, particulate matter adheres to the bars. Electronically timed hammers on top of the unit knock the particles downward into a hopper, where they are collected with salt from the spray dryer for transport to an authorized hazardous waste landfill.

**5 Four-stage wet scrubber** – Acid gases and submicron-sized particles are removed in this unit, which is made up of packed scrubbing beds and spray jets. Water used in this process is recycled to the spray dryer, where it is evaporated.

The efficient use of water allows the facility to better manage its natural resources and clean flue gases without generating waste water.

**7 Induced-draft fan** – This fan maintains negative air pressure throughout the entire system, ensuring that air is always drawn inward toward the incinerator.

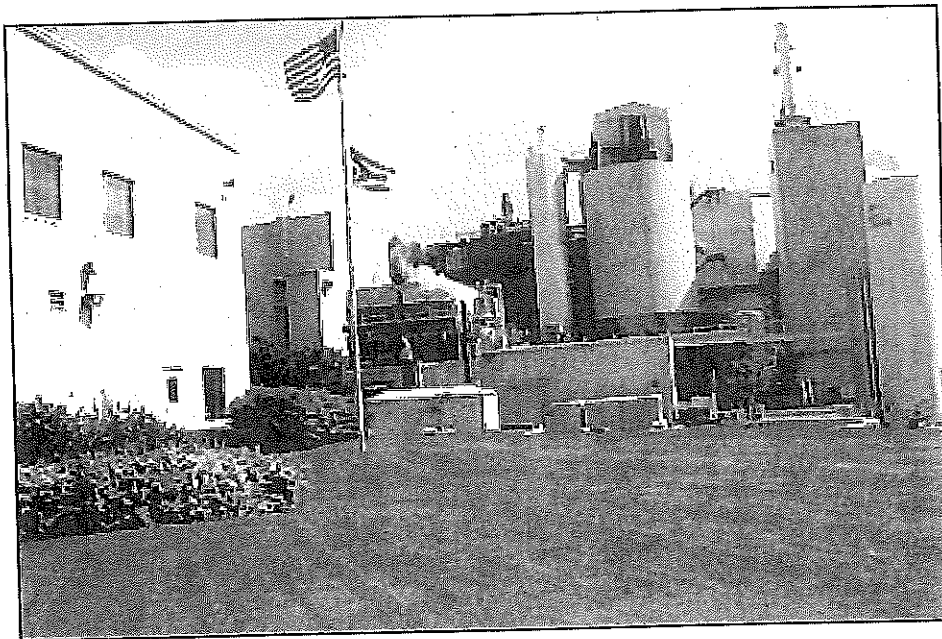
**8 Re-heater** – Before the scrubbed gas is emitted from the system it passes through this unit where it is reheated to about 190 degrees Fahrenheit. Doing so improves the elevation of the plume and the effectiveness of the in-stack monitoring equipment.

**9 Stack** – The cleaned and scrubbed gases are emitted through a single stack.

**Activated carbon** – At several points throughout the flue-gas cleaning system, activated carbon is injected into the gas stream. Dioxin and furan compounds, which form during combustion, adhere to the carbon and are removed by the particulate emissions control system. (Not shown)

EPA-R5ORC-AE2010-420

# SETTING TOMORROW'S STANDARDS



WTI is outfitted with myriad systems that are designed for one purpose - to protect the environment. From the one-of-its kind computer-tracking network to the miserly emissions controls, WTI technologies have set the standard for environmental excellence.

The 12 acres where the facility rests are subtly shaped for purposes of containment. The perimeter is secured by a foot-high berm that prevents storm water from migrating either on- or off-site. Within the berm lies a spill-containment network that includes dikes, curbs, sloped floors and sumps.

During construction, the site was elevated above the 500-year flood plain and all of the operations areas are paved with specially treated concrete. The design captures any water that has the potential to be in contact with waste and treat it on-site.

The site is capable of containing, at one time, the contents of all waste storage tanks, rain from the heaviest 24-hour storm that occurred in the past 25 year and six days of average rainfall that came down during the month of heaviest rainfall.

The storage system for liquid waste features a quadruple backup system that prevents overfilling, contains any spills, and alerts technicians to unexpected levels in the tanks.

In addition to containing any spills and controlling rain water and snow melt, WTI is also designed to capture vapors from operations areas. This recovery system captures vapors from the areas where waste is sampled, handled and stored, and directs them to the rotary kiln for destruction.

EPA-R5ORC-AE2010-421



1250 Saint George Street, East Liverpool, Ohio 43920  
Telephone: 330.385.7337 • Fax: 330.385.7813 • [www.heritage-wti.com](http://www.heritage-wti.com)





# March 15, 2011 WTI Settlement Conference

|                    |              |                      |
|--------------------|--------------|----------------------|
| 1. Donna MATSON    | 312-886-2243 | U.S. EPA ORC         |
| 2. Charlie Hall    | 312-353-3443 | U.S. EPA AECAB       |
| 3. JOHN PETERKA    | 330.386.2122 | HERITAGE-WTI         |
| 4. FRANK MURRAY    | 330 843 2590 | HERITAGE-WTI         |
| 5. Carrie Beringer | 330 386 2196 | Heritage-WTI         |
| 6. Mike Senales    | 317 281-7287 | James P. Downing LLP |





"Beringer, Carrie"  
<CBeringer@heritage-wti.co  
m>

To

Subject Scheduled Maintenance at the WTI Facility

11/13/2009 10:06 AM

Greetings:

At this time, Heritage-WTI (WTI) is conducting a maintenance outage for replacement of the Incinerator's Kiln Shell. Currently, the Incinerator is not operational but the facility is continuing to accept and store waste in accordance with its RCRA Part B Permit.

On November 14, 2009, WTI with the assistance of outside contractors will be servicing the incoming power substation and associated equipment. This is a scheduled maintenance activity that will require all power to the facility to be turned off. In addition, the emergency generator will be locked out so that it cannot supply power to the facility. The power outage is expected to last approximately 10 hours. During the power outage, WTI will be replacing or servicing the switchgear, breakers, and transformer on the incoming plant power supply. This means all recording devices and monitoring devices associated with alarms will not be operational for the duration of the power outage. The only piece of equipment that will be operating will be Vapor Recovery Blower #1. This will ensure that vapor recovery is being applied, as required, to the waste storage tanks located in the Organic and PT tank farms and to the Bulk Solid Pits (Title V ID# P002). All other waste management activities that involve the movement of waste materials will be halted to prevent unnecessary emissions to the boxes. In addition, the facility will not be accepting any incoming waste shipments during this period.

WTI will be operating one carbon box train and its Inter-Box CEMS. Because recording devices/equipment will not be operational, the data that is normally captured from the Inter-Box CEMS will not be automatically recorded by the facilities data systems. In addition, the alarm associated with the Inter-Box CEMS will not be functioning. To prevent or minimize any potential fugitive emissions from the carbon boxes, WTI will visually observe the reading from the THC analyzer. As required under 40 CFR 60.13(h)(2)(iii), WTI will use a minimum of two data points per hour, separated by at least 15 minutes, to calculate the hourly average of THC through the carbon boxes. These readings will be manually recorded and incorporated into the facility's operating record. This hourly average will be used to determine whether or not breakthrough has occurred. If WTI determines that breakthrough has, in fact, occurred, the Carbon Box train will be changed-out in accordance with the requirements of the Consent Decree.

WTI will do everything in its power to ensure that this maintenance activity is performed safely and presents a minimal environmental impact as possible. If you do not believe that the aforementioned plan for accomplishing this pursuant to the terms of the Consent Decree is sufficient, please contact me immediately so that other options can be evaluated.

If you have any questions or concerns regarding this e-mail, please feel free to contact me at 330.386.2196.

EPA-R5ORC-AE2010-487

Sincerely,

Carrie L Beringer  
Environmental, Health, & Safety Manager  
Heritage – WTI, Inc.

EPA-R5ORC-AE2010-488

## HERITAGE-WTI, Inc.

1250 St. George Street  
East Liverpool, Ohio 43920-3400  
Phone: 330-385-7337  
Fax: 330-385-7813  
Web Site: www.heritage-wti.com

ISO 9001



ISO 14001

January 26, 2010  
VIA PRIORITY MAIL  
RETURN RECEIPT REQUESTED

Chief, Environmental Enforcement Section  
Environmental and Natural Resources Division  
U.S. Department of Justice  
Box 7611 Ben Franklin Station  
Washington, D.C. 20044-7611  
Re: DOJ No. 90-5-2-1-08743

John Matson  
Associate Regional Counsel  
U.S. Environmental Protection Agency – Region 5  
77 West Jackson Blvd.  
Mail Code C-14J  
Chicago, IL 60604-3590

Charles Hall  
U.S. Environmental Protection Agency – Region 5  
77 West Jackson Blvd.  
Mail Code AE-17J  
Chicago, IL 60604-3590

Michael Cunningham  
U.S. Environmental Protection Agency – Region 5  
77 West Jackson Blvd.  
Mail Code DE-9J  
Chicago, IL 60604-3590

### **RE: Consent Decree Reporting Requirement**

Dear Gentlemen:

This report is being submitted in accordance with Paragraph 47 of the Consent Decree, Case No. 4:06CV2893.

Paragraph 47 requires Heritage – WTI, Inc. (WTI) to submit a quarterly report to the US EPA containing records of (i) each date and time that breakthrough occurs; (ii) the flow rate to the primary box (as determined by either the fan(s) or blower(s) or a flow monitoring device to the primary box) at the time of each breakthrough event and continuing until the change-out procedure commences; (iii) the date, time, and duration of each change-out; and (iv) the results of each investigation undertaken pursuant to the requirement of Paragraph 22.

WTI experienced two (2) carbon breakthrough events from October 1, 2009 through December 31, 2009. Both of the carbon break through events occurred on November 19, 2009.

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Recycled Paper

## November 19, 2009 Carbon Breakthrough Events

### **NORTH TRAIN**

The 50-ppm THC hourly limit on the North Train Primary box was exceeded at 9:08 pm on November 19, 2009. WTI removed the North Train from service at 5:06 am on November 20, 2009 and switched to the South Train. The North Train primary box change out began at 5:06 am and finished at 7:07 am on November 20, 2009. As a precautionary measure, WTI also replaced the North Train secondary box. The North Train secondary box change out began at 3:30 pm on November 20, 2009 and finished at 11:00 pm on November 20, 2009. During the time period in which the secondary box was replaced, vapors were again routed to the South Train.

The flow rate to the North Primary box at the time of the breakthrough event and continuing until the change-out procedure commenced on the primary box for this event is included in Attachment A.

### **SOUTH TRAIN**

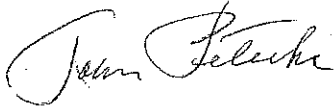
The 50-ppm THC hourly limit on the South Train Primary box was exceeded at 11:25 pm on November 19, 2009. WTI removed the South Train from service at 7:07 am on November 20, 2009 and switched to the North Train. As a precautionary measure, WTI replaced both the primary and secondary boxes of the South Train. The South Train change out (both primary and secondary) began at 2:00 am and finished at 12:15 pm on November 21, 2009.

The flow rate to the South Primary box at the time of the breakthrough event and continuing until the change-out procedure commenced for this event is included in Attachment B.

There were no investigations undertaken pursuant to the requirement of Paragraph 22. I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are certain penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If you have any questions regarding this letter, please contact me at the above number.

Sincerely,

A handwritten signature in cursive script, appearing to read "John Peterka".

John Peterka  
President  
Heritage – WTI, Inc.

cc: John Peterka – Heritage - WTI, Inc.  
Laurence McHugh – Barnes & Thornburg LLP  
Michael Scanlon – Barnes & Thornburg LLP

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# **ATTACHMENT A**

**Carbon Breakthrough Event on 11/19/09 – North Train**

# Carbon Breakthrough Event on November 19, 2009 - North Train

50-ppm THC hourly average on the North Train was exceeded at 9:08 pm on 11/19/09. WTI removed the North Train from service at 5:06 am on 11/20/09. This spreadsheet provides the information required under paragraph 47, ii, of the Consent Decree, Case No. 06CV2893.

| Time             | North Box Flowin SCFM |
|------------------|-----------------------|
| 11/19/2009 21:08 | 8082.50               |
| 11/19/2009 21:09 | 8087.63               |
| 11/19/2009 21:10 | 8074.75               |
| 11/19/2009 21:11 | 8074.50               |
| 11/19/2009 21:12 | 8086.13               |
| 11/19/2009 21:13 | 8085.00               |
| 11/19/2009 21:14 | 8082.00               |
| 11/19/2009 21:15 | 8076.00               |
| 11/19/2009 21:16 | 8090.50               |
| 11/19/2009 21:17 | 8090.25               |
| 11/19/2009 21:18 | 8077.75               |
| 11/19/2009 21:19 | 8079.63               |
| 11/19/2009 21:20 | 8082.00               |
| 11/19/2009 21:21 | 8085.88               |
| 11/19/2009 21:22 | 8080.88               |
| 11/19/2009 21:23 | 8101.63               |
| 11/19/2009 21:24 | 8073.38               |
| 11/19/2009 21:25 | 8084.75               |
| 11/19/2009 21:26 | 8101.75               |
| 11/19/2009 21:27 | 8089.38               |
| 11/19/2009 21:28 | 8096.38               |
| 11/19/2009 21:29 | 8098.13               |
| 11/19/2009 21:30 | 8097.75               |
| 11/19/2009 21:31 | 8098.50               |
| 11/19/2009 21:32 | 8107.88               |
| 11/19/2009 21:33 | 8089.50               |
| 11/19/2009 21:34 | 1070.63               |
| 11/19/2009 21:35 | 776.78                |
| 11/19/2009 21:36 | 697.03                |
| 11/19/2009 21:37 | 735.77                |
| 11/19/2009 21:38 | 715.44                |
| 11/19/2009 21:39 | 742.56                |
| 11/19/2009 21:40 | 733.45                |
| 11/19/2009 21:41 | 717.02                |
| 11/19/2009 21:42 | 742.00                |
| 11/19/2009 21:43 | 715.42                |
| 11/19/2009 21:44 | 719.05                |
| 11/19/2009 21:45 | 720.47                |
| 11/19/2009 21:46 | 721.16                |
| 11/19/2009 21:47 | 257.63                |
| 11/19/2009 21:48 | 48.46                 |
| 11/19/2009 21:49 | 53.34                 |
| 11/19/2009 21:50 | 30.82                 |
| 11/19/2009 21:51 | 33.82                 |
| 11/19/2009 21:52 | 16.89                 |

| Time             | North Box Flowin SCFM |
|------------------|-----------------------|
| 11/19/2009 21:53 | 31.16                 |
| 11/19/2009 21:54 | 31.95                 |
| 11/19/2009 21:55 | 0.00                  |
| 11/19/2009 21:56 | 36.49                 |
| 11/19/2009 21:57 | 63.81                 |
| 11/19/2009 21:58 | 16.18                 |
| 11/19/2009 21:59 | 0.00                  |
| 11/19/2009 22:00 | 69.78                 |
| 11/19/2009 22:01 | 17.27                 |
| 11/19/2009 22:02 | 51.76                 |
| 11/19/2009 22:03 | 72.53                 |
| 11/19/2009 22:04 | 35.25                 |
| 11/19/2009 22:05 | 48.58                 |
| 11/19/2009 22:06 | 38.70                 |
| 11/19/2009 22:07 | 33.86                 |
| 11/19/2009 22:08 | 47.79                 |
| 11/19/2009 22:09 | 18.10                 |
| 11/19/2009 22:10 | 32.70                 |
| 11/19/2009 22:11 | 0.00                  |
| 11/19/2009 22:12 | 33.03                 |
| 11/19/2009 22:13 | 69.94                 |
| 11/19/2009 22:14 | 35.32                 |
| 11/19/2009 22:15 | 36.41                 |
| 11/19/2009 22:16 | 49.25                 |
| 11/19/2009 22:17 | 15.43                 |
| 11/19/2009 22:18 | 30.90                 |
| 11/19/2009 22:19 | 47.26                 |
| 11/19/2009 22:20 | 47.75                 |
| 11/19/2009 22:21 | 33.49                 |
| 11/19/2009 22:22 | 36.11                 |
| 11/19/2009 22:23 | 65.73                 |
| 11/19/2009 22:24 | 53.50                 |
| 11/19/2009 22:25 | 55.30                 |
| 11/19/2009 22:26 | 49.67                 |
| 11/19/2009 22:27 | 49.25                 |
| 11/19/2009 22:28 | 29.69                 |
| 11/19/2009 22:29 | 63.44                 |
| 11/19/2009 22:30 | 62.43                 |
| 11/19/2009 22:31 | 49.25                 |
| 11/19/2009 22:32 | 94.12                 |
| 11/19/2009 22:33 | 35.32                 |
| 11/19/2009 22:34 | 36.83                 |
| 11/19/2009 22:35 | 0.00                  |
| 11/19/2009 22:36 | 30.52                 |
| 11/19/2009 22:37 | 33.11                 |

| Time             | North Box Flowin SCFM |
|------------------|-----------------------|
| 11/19/2009 22:38 | 50.34                 |
| 11/19/2009 22:39 | 53.42                 |
| 11/19/2009 22:40 | 51.88                 |
| 11/19/2009 22:41 | 64.68                 |
| 11/19/2009 22:42 | 14.68                 |
| 11/19/2009 22:43 | 33.90                 |
| 11/19/2009 22:44 | 17.64                 |
| 11/19/2009 22:45 | 47.79                 |
| 11/19/2009 22:46 | 16.26                 |
| 11/19/2009 22:47 | 18.06                 |
| 11/19/2009 22:48 | 51.92                 |
| 11/19/2009 22:49 | 18.02                 |
| 11/19/2009 22:50 | 14.64                 |
| 11/19/2009 22:51 | 15.80                 |
| 11/19/2009 22:52 | 50.38                 |
| 11/19/2009 22:53 | 31.57                 |
| 11/19/2009 22:54 | 71.36                 |
| 11/19/2009 22:55 | 32.99                 |
| 11/19/2009 22:56 | 32.40                 |
| 11/19/2009 22:57 | 18.39                 |
| 11/19/2009 22:58 | 48.01                 |
| 11/19/2009 22:59 | 33.86                 |
| 11/19/2009 23:00 | 50.64                 |
| 11/19/2009 23:01 | 0.00                  |
| 11/19/2009 23:02 | 83.21                 |
| 11/19/2009 23:03 | 16.85                 |
| 11/19/2009 23:04 | 34.20                 |
| 11/19/2009 23:05 | 0.00                  |
| 11/19/2009 23:06 | 45.58                 |
| 11/19/2009 23:07 | 29.28                 |
| 11/19/2009 23:08 | 50.71                 |
| 11/19/2009 23:09 | 66.81                 |
| 11/19/2009 23:10 | 35.36                 |
| 11/19/2009 23:11 | 31.98                 |
| 11/19/2009 23:12 | 69.15                 |
| 11/19/2009 23:13 | 0.00                  |
| 11/19/2009 23:14 | 32.74                 |
| 11/19/2009 23:15 | 99.29                 |
| 11/19/2009 23:16 | 21.06                 |
| 11/19/2009 23:17 | 32.70                 |
| 11/19/2009 23:18 | 54.13                 |
| 11/19/2009 23:19 | 51.88                 |
| 11/19/2009 23:20 | 72.19                 |
| 11/19/2009 23:21 | 20.27                 |
| 11/19/2009 23:22 | 49.17                 |

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## Carbon Breakthrough Event on November 19, 2009 - North Train

| Time             | North Box Flowin SCFM |
|------------------|-----------------------|
| 11/19/2009 23:23 | 0.00                  |
| 11/19/2009 23:24 | 55.97                 |
| 11/19/2009 23:25 | 0.00                  |
| 11/19/2009 23:26 | 48.50                 |
| 11/19/2009 23:27 | 28.61                 |
| 11/19/2009 23:28 | 14.30                 |
| 11/19/2009 23:29 | 54.80                 |
| 11/19/2009 23:30 | 16.56                 |
| 11/19/2009 23:31 | 48.88                 |
| 11/19/2009 23:32 | 33.07                 |
| 11/19/2009 23:33 | 37.87                 |
| 11/19/2009 23:34 | 50.64                 |
| 11/19/2009 23:35 | 18.02                 |
| 11/19/2009 23:36 | 35.29                 |
| 11/19/2009 23:37 | 67.76                 |
| 11/19/2009 23:38 | 0.00                  |
| 11/19/2009 23:39 | 15.84                 |
| 11/19/2009 23:40 | 31.19                 |
| 11/19/2009 23:41 | 15.77                 |
| 11/19/2009 23:42 | 36.79                 |
| 11/19/2009 23:43 | 69.70                 |
| 11/19/2009 23:44 | 16.52                 |
| 11/19/2009 23:45 | 33.07                 |
| 11/19/2009 23:46 | 65.06                 |
| 11/19/2009 23:47 | 34.24                 |
| 11/19/2009 23:48 | 96.43                 |
| 11/19/2009 23:49 | 32.36                 |
| 11/19/2009 23:50 | 15.05                 |
| 11/19/2009 23:51 | 30.86                 |
| 11/19/2009 23:52 | 34.20                 |
| 11/19/2009 23:53 | 15.73                 |
| 11/19/2009 23:54 | 15.77                 |
| 11/19/2009 23:55 | 109.43                |
| 11/19/2009 23:56 | 78.90                 |
| 11/19/2009 23:57 | 0.00                  |
| 11/19/2009 23:58 | 32.70                 |
| 11/19/2009 23:59 | 32.36                 |
| 11/20/2009 00:00 | 34.32                 |
| 11/20/2009 00:01 | 33.49                 |
| 11/20/2009 00:02 | 65.35                 |
| 11/20/2009 00:03 | 70.76                 |
| 11/20/2009 00:04 | 18.02                 |
| 11/20/2009 00:05 | 18.43                 |
| 11/20/2009 00:06 | 14.64                 |
| 11/20/2009 00:07 | 66.52                 |
| 11/20/2009 00:08 | 15.43                 |
| 11/20/2009 00:09 | 34.91                 |

| Time             | North Box Flowin SCFM |
|------------------|-----------------------|
| 11/20/2009 00:10 | 0.00                  |
| 11/20/2009 00:11 | 48.46                 |
| 11/20/2009 00:12 | 32.66                 |
| 11/20/2009 00:13 | 16.89                 |
| 11/20/2009 00:14 | 46.21                 |
| 11/20/2009 00:15 | 34.57                 |
| 11/20/2009 00:16 | 0.00                  |
| 11/20/2009 00:17 | 0.00                  |
| 11/20/2009 00:18 | 15.39                 |
| 11/20/2009 00:19 | 66.97                 |
| 11/20/2009 00:20 | 49.25                 |
| 11/20/2009 00:21 | 30.15                 |
| 11/20/2009 00:22 | 21.73                 |
| 11/20/2009 00:23 | 51.46                 |
| 11/20/2009 00:24 | 29.99                 |
| 11/20/2009 00:25 | 76.95                 |
| 11/20/2009 00:26 | 62.80                 |
| 11/20/2009 00:27 | 15.47                 |
| 11/20/2009 00:28 | 17.35                 |
| 11/20/2009 00:29 | 31.57                 |
| 11/20/2009 00:30 | 0.00                  |
| 11/20/2009 00:31 | 15.39                 |
| 11/20/2009 00:32 | 16.18                 |
| 11/20/2009 00:33 | 31.95                 |
| 11/20/2009 00:34 | 66.18                 |
| 11/20/2009 00:35 | 35.70                 |
| 11/20/2009 00:36 | 45.91                 |
| 11/20/2009 00:37 | 51.88                 |
| 11/20/2009 00:38 | 34.57                 |
| 11/20/2009 00:39 | 48.24                 |
| 11/20/2009 00:40 | 79.70                 |
| 11/20/2009 00:41 | 0.00                  |
| 11/20/2009 00:42 | 36.04                 |
| 11/20/2009 00:43 | 0.00                  |
| 11/20/2009 00:44 | 107.93                |
| 11/20/2009 00:45 | 33.23                 |
| 11/20/2009 00:46 | 45.46                 |
| 11/20/2009 00:47 | 16.48                 |
| 11/20/2009 00:48 | 18.85                 |
| 11/20/2009 00:49 | 51.46                 |
| 11/20/2009 00:50 | 29.69                 |
| 11/20/2009 00:51 | 31.65                 |
| 11/20/2009 00:52 | 14.68                 |
| 11/20/2009 00:53 | 33.49                 |
| 11/20/2009 00:54 | 384.27                |
| 11/20/2009 00:55 | 618.83                |
| 11/20/2009 00:56 | 734.53                |

| Time             | North Box Flowin SCFM |
|------------------|-----------------------|
| 11/20/2009 00:57 | 745.64                |
| 11/20/2009 00:58 | 753.13                |
| 11/20/2009 00:59 | 758.47                |
| 11/20/2009 01:00 | 765.89                |
| 11/20/2009 01:01 | 761.38                |
| 11/20/2009 01:02 | 780.66                |
| 11/20/2009 01:03 | 765.27                |
| 11/20/2009 01:04 | 774.19                |
| 11/20/2009 01:05 | 755.80                |
| 11/20/2009 01:06 | 755.14                |
| 11/20/2009 01:07 | 764.94                |
| 11/20/2009 01:08 | 783.34                |
| 11/20/2009 01:09 | 758.80                |
| 11/20/2009 01:10 | 752.97                |
| 11/20/2009 01:11 | 751.14                |
| 11/20/2009 01:12 | 758.14                |
| 11/20/2009 01:13 | 762.22                |
| 11/20/2009 01:14 | 740.61                |
| 11/20/2009 01:15 | 772.13                |
| 11/20/2009 01:16 | 760.30                |
| 11/20/2009 01:17 | 754.09                |
| 11/20/2009 01:18 | 748.95                |
| 11/20/2009 01:19 | 777.23                |
| 11/20/2009 01:20 | 755.52                |
| 11/20/2009 01:21 | 732.75                |
| 11/20/2009 01:22 | 726.61                |
| 11/20/2009 01:23 | 754.02                |
| 11/20/2009 01:24 | 751.67                |
| 11/20/2009 01:25 | 750.13                |
| 11/20/2009 01:26 | 736.38                |
| 11/20/2009 01:27 | 753.45                |
| 11/20/2009 01:28 | 763.92                |
| 11/20/2009 01:29 | 780.66                |
| 11/20/2009 01:30 | 750.72                |
| 11/20/2009 01:31 | 756.59                |
| 11/20/2009 01:32 | 758.28                |
| 11/20/2009 01:33 | 787.28                |
| 11/20/2009 01:34 | 742.30                |
| 11/20/2009 01:35 | 741.27                |
| 11/20/2009 01:36 | 728.44                |
| 11/20/2009 01:37 | 741.81                |
| 11/20/2009 01:38 | 774.66                |
| 11/20/2009 01:39 | 749.50                |
| 11/20/2009 01:40 | 769.78                |
| 11/20/2009 01:41 | 779.91                |
| 11/20/2009 01:42 | 738.98                |
| 11/20/2009 01:43 | 738.06                |

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Carbon Breakthrough Event on November 19, 2009 - North Train

| Time             | North Box Flowin SCFM |
|------------------|-----------------------|
| 11/20/2009 01:44 | 734.11                |
| 11/20/2009 01:45 | 744.72                |
| 11/20/2009 01:46 | 760.02                |
| 11/20/2009 01:47 | 761.05                |
| 11/20/2009 01:48 | 723.69                |
| 11/20/2009 01:49 | 751.30                |
| 11/20/2009 01:50 | 765.42                |
| 11/20/2009 01:51 | 749.55                |
| 11/20/2009 01:52 | 779.41                |
| 11/20/2009 01:53 | 738.53                |
| 11/20/2009 01:54 | 743.08                |
| 11/20/2009 01:55 | 753.55                |
| 11/20/2009 01:56 | 759.55                |
| 11/20/2009 01:57 | 757.39                |
| 11/20/2009 01:58 | 764.39                |
| 11/20/2009 01:59 | 731.44                |
| 11/20/2009 02:00 | 756.75                |
| 11/20/2009 02:01 | 753.25                |
| 11/20/2009 02:02 | 767.19                |
| 11/20/2009 02:03 | 747.20                |
| 11/20/2009 02:04 | 768.66                |
| 11/20/2009 02:05 | 744.25                |
| 11/20/2009 02:06 | 756.22                |
| 11/20/2009 02:07 | 747.53                |
| 11/20/2009 02:08 | 775.36                |
| 11/20/2009 02:09 | 760.95                |
| 11/20/2009 02:10 | 722.34                |
| 11/20/2009 02:11 | 769.27                |
| 11/20/2009 02:12 | 768.78                |
| 11/20/2009 02:13 | 757.19                |
| 11/20/2009 02:14 | 764.14                |
| 11/20/2009 02:15 | 794.42                |
| 11/20/2009 02:16 | 734.73                |
| 11/20/2009 02:17 | 775.41                |
| 11/20/2009 02:18 | 744.16                |
| 11/20/2009 02:19 | 763.27                |
| 11/20/2009 02:20 | 755.94                |
| 11/20/2009 02:21 | 768.36                |
| 11/20/2009 02:22 | 737.36                |
| 11/20/2009 02:23 | 777.95                |
| 11/20/2009 02:24 | 717.59                |
| 11/20/2009 02:25 | 779.20                |
| 11/20/2009 02:26 | 745.28                |
| 11/20/2009 02:27 | 760.20                |
| 11/20/2009 02:28 | 757.30                |
| 11/20/2009 02:29 | 759.27                |
| 11/20/2009 02:30 | 759.83                |

| Time             | North Box Flowin SCFM |
|------------------|-----------------------|
| 11/20/2009 02:31 | 756.13                |
| 11/20/2009 02:32 | 749.75                |
| 11/20/2009 02:33 | 752.50                |
| 11/20/2009 02:34 | 758.05                |
| 11/20/2009 02:35 | 764.19                |
| 11/20/2009 02:36 | 778.66                |
| 11/20/2009 02:37 | 724.27                |
| 11/20/2009 02:38 | 742.92                |
| 11/20/2009 02:39 | 753.02                |
| 11/20/2009 02:40 | 751.98                |
| 11/20/2009 02:41 | 757.61                |
| 11/20/2009 02:42 | 773.63                |
| 11/20/2009 02:43 | 752.92                |
| 11/20/2009 02:44 | 754.80                |
| 11/20/2009 02:45 | 758.47                |
| 11/20/2009 02:46 | 748.80                |
| 11/20/2009 02:47 | 758.52                |
| 11/20/2009 02:48 | 743.64                |
| 11/20/2009 02:49 | 769.69                |
| 11/20/2009 02:50 | 771.28                |
| 11/20/2009 02:51 | 742.59                |
| 11/20/2009 02:52 | 755.22                |
| 11/20/2009 02:53 | 773.63                |
| 11/20/2009 02:54 | 719.14                |
| 11/20/2009 02:55 | 763.22                |
| 11/20/2009 02:56 | 745.27                |
| 11/20/2009 02:57 | 775.50                |
| 11/20/2009 02:58 | 775.73                |
| 11/20/2009 02:59 | 752.50                |
| 11/20/2009 03:00 | 780.23                |
| 11/20/2009 03:01 | 777.70                |
| 11/20/2009 03:02 | 771.66                |
| 11/20/2009 03:03 | 740.03                |
| 11/20/2009 03:04 | 771.50                |
| 11/20/2009 03:05 | 718.44                |
| 11/20/2009 03:06 | 729.28                |
| 11/20/2009 03:07 | 745.66                |
| 11/20/2009 03:08 | 755.27                |
| 11/20/2009 03:09 | 761.67                |
| 11/20/2009 03:10 | 748.14                |
| 11/20/2009 03:11 | 756.13                |
| 11/20/2009 03:12 | 753.13                |
| 11/20/2009 03:13 | 745.66                |
| 11/20/2009 03:14 | 753.86                |
| 11/20/2009 03:15 | 761.19                |
| 11/20/2009 03:16 | 758.98                |
| 11/20/2009 03:17 | 772.83                |

| Time             | North Box Flowin SCFM |
|------------------|-----------------------|
| 11/20/2009 03:18 | 739.78                |
| 11/20/2009 03:19 | 754.52                |
| 11/20/2009 03:20 | 753.88                |
| 11/20/2009 03:21 | 766.69                |
| 11/20/2009 03:22 | 781.00                |
| 11/20/2009 03:23 | 758.23                |
| 11/20/2009 03:24 | 752.70                |
| 11/20/2009 03:25 | 760.03                |
| 11/20/2009 03:26 | 740.13                |
| 11/20/2009 03:27 | 740.08                |
| 11/20/2009 03:28 | 758.19                |
| 11/20/2009 03:29 | 757.63                |
| 11/20/2009 03:30 | 724.86                |
| 11/20/2009 03:31 | 767.48                |
| 11/20/2009 03:32 | 772.16                |
| 11/20/2009 03:33 | 756.55                |
| 11/20/2009 03:34 | 773.11                |
| 11/20/2009 03:35 | 731.11                |
| 11/20/2009 03:36 | 746.59                |
| 11/20/2009 03:37 | 756.73                |
| 11/20/2009 03:38 | 727.78                |
| 11/20/2009 03:39 | 768.00                |
| 11/20/2009 03:40 | 744.06                |
| 11/20/2009 03:41 | 738.39                |
| 11/20/2009 03:42 | 731.77                |
| 11/20/2009 03:43 | 750.92                |
| 11/20/2009 03:44 | 762.97                |
| 11/20/2009 03:45 | 739.33                |
| 11/20/2009 03:46 | 763.92                |
| 11/20/2009 03:47 | 772.03                |
| 11/20/2009 03:48 | 751.80                |
| 11/20/2009 03:49 | 733.19                |
| 11/20/2009 03:50 | 736.00                |
| 11/20/2009 03:51 | 759.44                |
| 11/20/2009 03:52 | 755.94                |
| 11/20/2009 03:53 | 756.02                |
| 11/20/2009 03:54 | 744.30                |
| 11/20/2009 03:55 | 769.92                |
| 11/20/2009 03:56 | 784.70                |
| 11/20/2009 03:57 | 748.63                |
| 11/20/2009 03:58 | 760.25                |
| 11/20/2009 03:59 | 748.80                |
| 11/20/2009 04:00 | 751.80                |
| 11/20/2009 04:01 | 776.36                |
| 11/20/2009 04:02 | 757.59                |
| 11/20/2009 04:03 | 768.14                |
| 11/20/2009 04:04 | 785.08                |

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Carbon Breakthrough Event on November 19, 2009 - North Train

| Time             | North Box Flowin SCFM |
|------------------|-----------------------|
| 11/20/2009 04:05 | 763.02                |
| 11/20/2009 04:06 | 746.70                |
| 11/20/2009 04:07 | 758.70                |
| 11/20/2009 04:08 | 745.61                |
| 11/20/2009 04:09 | 748.70                |
| 11/20/2009 04:10 | 749.08                |
| 11/20/2009 04:11 | 763.34                |
| 11/20/2009 04:12 | 770.20                |
| 11/20/2009 04:13 | 768.52                |
| 11/20/2009 04:14 | 759.13                |
| 11/20/2009 04:15 | 748.84                |
| 11/20/2009 04:16 | 746.50                |
| 11/20/2009 04:17 | 743.08                |
| 11/20/2009 04:18 | 753.97                |
| 11/20/2009 04:19 | 724.69                |
| 11/20/2009 04:20 | 771.19                |
| 11/20/2009 04:21 | 739.33                |
| 11/20/2009 04:22 | 743.75                |
| 11/20/2009 04:23 | 750.02                |
| 11/20/2009 04:24 | 750.95                |
| 11/20/2009 04:25 | 759.83                |
| 11/20/2009 04:26 | 750.95                |
| 11/20/2009 04:27 | 763.86                |
| 11/20/2009 04:28 | 749.27                |
| 11/20/2009 04:29 | 750.25                |
| 11/20/2009 04:30 | 762.27                |
| 11/20/2009 04:31 | 751.47                |
| 11/20/2009 04:32 | 756.33                |
| 11/20/2009 04:33 | 766.27                |
| 11/20/2009 04:34 | 774.19                |
| 11/20/2009 04:35 | 767.33                |
| 11/20/2009 04:36 | 763.39                |
| 11/20/2009 04:37 | 744.58                |
| 11/20/2009 04:38 | 780.25                |
| 11/20/2009 04:39 | 749.80                |
| 11/20/2009 04:40 | 772.50                |
| 11/20/2009 04:41 | 750.77                |
| 11/20/2009 04:42 | 742.00                |
| 11/20/2009 04:43 | 768.28                |
| 11/20/2009 04:44 | 742.75                |
| 11/20/2009 04:45 | 761.98                |
| 11/20/2009 04:46 | 782.30                |
| 11/20/2009 04:47 | 752.92                |
| 11/20/2009 04:48 | 761.33                |
| 11/20/2009 04:49 | 742.05                |
| 11/20/2009 04:50 | 759.16                |
| 11/20/2009 04:51 | 752.55                |

| Time             | North Box Flowin SCFM |
|------------------|-----------------------|
| 11/20/2009 04:52 | 763.39                |
| 11/20/2009 04:53 | 767.19                |
| 11/20/2009 04:54 | 743.30                |
| 11/20/2009 04:55 | 736.31                |
| 11/20/2009 04:56 | 746.78                |
| 11/20/2009 04:57 | 746.17                |
| 11/20/2009 04:58 | 765.27                |
| 11/20/2009 04:59 | 749.92                |
| 11/20/2009 05:00 | 735.05                |
| 11/20/2009 05:01 | 767.06                |
| 11/20/2009 05:02 | 759.50                |
| 11/20/2009 05:03 | 748.02                |
| 11/20/2009 05:04 | 764.52                |
| 11/20/2009 05:05 | 750.17                |

| Time | North Box Flowin SCFM |
|------|-----------------------|
|------|-----------------------|

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# **ATTACHMENT B**

**Carbon Breakthrough Event on 11/19/09 – South Train**

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# Carbon Breakthrough Event on November 19, 2009 - South Train

50-ppm THC hourly average on the South Train was exceeded at 11:25 pm on 11/19/09. WTI removed the South Train from service at 7:07 am on 11/20/09. This spreadsheet provides the information required under paragraph 47, ii, of the Consent Decree, Case No. 06CV2893

| Time             | South Box Flow in SCFM | Time             | South Box Flow in SCFM | Time             | South Box Flow in SCFM |
|------------------|------------------------|------------------|------------------------|------------------|------------------------|
| 11/19/2009 23:25 | 9775                   | 11/20/2009 00:07 | 9758                   | 11/20/2009 00:49 | 9774.75                |
| 11/19/2009 23:26 | 9780.25                | 11/20/2009 00:08 | 9765.25                | 11/20/2009 00:50 | 9783                   |
| 11/19/2009 23:27 | 9791.25                | 11/20/2009 00:09 | 9765                   | 11/20/2009 00:51 | 9787.75                |
| 11/19/2009 23:28 | 9772.5                 | 11/20/2009 00:10 | 9773.5                 | 11/20/2009 00:52 | 9783                   |
| 11/19/2009 23:29 | 9803.25                | 11/20/2009 00:11 | 9783.75                | 11/20/2009 00:53 | 9780.5                 |
| 11/19/2009 23:30 | 9776.25                | 11/20/2009 00:12 | 9782.25                | 11/20/2009 00:54 | 9790                   |
| 11/19/2009 23:31 | 9787.25                | 11/20/2009 00:13 | 9770.25                | 11/20/2009 00:55 | 9670.5                 |
| 11/19/2009 23:32 | 9769                   | 11/20/2009 00:14 | 9774.75                | 11/20/2009 00:56 | 9581.5                 |
| 11/19/2009 23:33 | 9790                   | 11/20/2009 00:15 | 9762.25                | 11/20/2009 00:57 | 9583.25                |
| 11/19/2009 23:34 | 9780.5                 | 11/20/2009 00:16 | 9770.5                 | 11/20/2009 00:58 | 9582.75                |
| 11/19/2009 23:35 | 9777                   | 11/20/2009 00:17 | 9769.75                | 11/20/2009 00:59 | 9583.25                |
| 11/19/2009 23:36 | 9796                   | 11/20/2009 00:18 | 9756.75                | 11/20/2009 01:00 | 9572.5                 |
| 11/19/2009 23:37 | 9817.25                | 11/20/2009 00:19 | 9788.25                | 11/20/2009 01:01 | 9580.5                 |
| 11/19/2009 23:38 | 9802                   | 11/20/2009 00:20 | 9785.25                | 11/20/2009 01:02 | 9573.75                |
| 11/19/2009 23:39 | 9761.25                | 11/20/2009 00:21 | 9777.25                | 11/20/2009 01:03 | 9574.25                |
| 11/19/2009 23:40 | 9778                   | 11/20/2009 00:22 | 9760                   | 11/20/2009 01:04 | 9560.25                |
| 11/19/2009 23:41 | 9778.5                 | 11/20/2009 00:23 | 9777                   | 11/20/2009 01:05 | 9565.75                |
| 11/19/2009 23:42 | 9778.25                | 11/20/2009 00:24 | 9781.5                 | 11/20/2009 01:06 | 9591.5                 |
| 11/19/2009 23:43 | 9768.5                 | 11/20/2009 00:25 | 9778.25                | 11/20/2009 01:07 | 9554.75                |
| 11/19/2009 23:44 | 9750                   | 11/20/2009 00:26 | 9782.5                 | 11/20/2009 01:08 | 9568                   |
| 11/19/2009 23:45 | 9785.75                | 11/20/2009 00:27 | 9798                   | 11/20/2009 01:09 | 9586.75                |
| 11/19/2009 23:46 | 9782.75                | 11/20/2009 00:28 | 9763.75                | 11/20/2009 01:10 | 9579.25                |
| 11/19/2009 23:47 | 9775                   | 11/20/2009 00:29 | 9788                   | 11/20/2009 01:11 | 9585.75                |
| 11/19/2009 23:48 | 9776.25                | 11/20/2009 00:30 | 9785.75                | 11/20/2009 01:12 | 9575.5                 |
| 11/19/2009 23:49 | 9800.25                | 11/20/2009 00:31 | 9773                   | 11/20/2009 01:13 | 9572.75                |
| 11/19/2009 23:50 | 9761.25                | 11/20/2009 00:32 | 9819.25                | 11/20/2009 01:14 | 9588.5                 |
| 11/19/2009 23:51 | 9771.5                 | 11/20/2009 00:33 | 9769.25                | 11/20/2009 01:15 | 9574                   |
| 11/19/2009 23:52 | 9782.5                 | 11/20/2009 00:34 | 9755.75                | 11/20/2009 01:16 | 9578.75                |
| 11/19/2009 23:53 | 9775                   | 11/20/2009 00:35 | 9756                   | 11/20/2009 01:17 | 9601.25                |
| 11/19/2009 23:54 | 9781.75                | 11/20/2009 00:36 | 9772                   | 11/20/2009 01:18 | 9567.25                |
| 11/19/2009 23:55 | 9793                   | 11/20/2009 00:37 | 9778                   | 11/20/2009 01:19 | 9586                   |
| 11/19/2009 23:56 | 9794.5                 | 11/20/2009 00:38 | 9775                   | 11/20/2009 01:20 | 9572.5                 |
| 11/19/2009 23:57 | 9798                   | 11/20/2009 00:39 | 9768                   | 11/20/2009 01:21 | 9591.5                 |
| 11/19/2009 23:58 | 9770                   | 11/20/2009 00:40 | 9757                   | 11/20/2009 01:22 | 9572.5                 |
| 11/19/2009 23:59 | 9783.5                 | 11/20/2009 00:41 | 9777                   | 11/20/2009 01:23 | 9571                   |
| 11/20/2009 00:00 | 9805.75                | 11/20/2009 00:42 | 9743                   | 11/20/2009 01:24 | 9559.25                |
| 11/20/2009 00:01 | 9770                   | 11/20/2009 00:43 | 9757.75                | 11/20/2009 01:25 | 9598.25                |
| 11/20/2009 00:02 | 9779.25                | 11/20/2009 00:44 | 9767.25                | 11/20/2009 01:26 | 9560.75                |
| 11/20/2009 00:03 | 9755.5                 | 11/20/2009 00:45 | 9794.5                 | 11/20/2009 01:27 | 9601.75                |
| 11/20/2009 00:04 | 9790.5                 | 11/20/2009 00:46 | 9783.75                | 11/20/2009 01:28 | 9577                   |
| 11/20/2009 00:05 | 9780.25                | 11/20/2009 00:47 | 9743.75                | 11/20/2009 01:29 | 9594.75                |
| 11/20/2009 00:06 | 9755.75                | 11/20/2009 00:48 | 9786.5                 | 11/20/2009 01:30 | 9592.5                 |

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Carbon Breakthrough Event on November 19, 2009 - South Train

| Time             | South Box Flow in SCFM |
|------------------|------------------------|
| 11/20/2009 01:31 | 9568.25                |
| 11/20/2009 01:32 | 9588.75                |
| 11/20/2009 01:33 | 9571.5                 |
| 11/20/2009 01:34 | 9581.5                 |
| 11/20/2009 01:35 | 9583.25                |
| 11/20/2009 01:36 | 9580                   |
| 11/20/2009 01:37 | 9584.75                |
| 11/20/2009 01:38 | 9594.5                 |
| 11/20/2009 01:39 | 9576                   |
| 11/20/2009 01:40 | 9566                   |
| 11/20/2009 01:41 | 9569                   |
| 11/20/2009 01:42 | 9553                   |
| 11/20/2009 01:43 | 9568.25                |
| 11/20/2009 01:44 | 9604.5                 |
| 11/20/2009 01:45 | 9572.5                 |
| 11/20/2009 01:46 | 9609.75                |
| 11/20/2009 01:47 | 9589.75                |
| 11/20/2009 01:48 | 9565.75                |
| 11/20/2009 01:49 | 9596.5                 |
| 11/20/2009 01:50 | 9572.25                |
| 11/20/2009 01:51 | 9589.5                 |
| 11/20/2009 01:52 | 9582.5                 |
| 11/20/2009 01:53 | 9576.25                |
| 11/20/2009 01:54 | 9567                   |
| 11/20/2009 01:55 | 9564.25                |
| 11/20/2009 01:56 | 9571.25                |
| 11/20/2009 01:57 | 9560.25                |
| 11/20/2009 01:58 | 9607                   |
| 11/20/2009 01:59 | 9580                   |
| 11/20/2009 02:00 | 9570.5                 |
| 11/20/2009 02:01 | 9561.5                 |
| 11/20/2009 02:02 | 9569.75                |
| 11/20/2009 02:03 | 9577                   |
| 11/20/2009 02:04 | 9593                   |
| 11/20/2009 02:05 | 9624.5                 |
| 11/20/2009 02:06 | 9589.25                |
| 11/20/2009 02:07 | 9570.5                 |
| 11/20/2009 02:08 | 9580.75                |
| 11/20/2009 02:09 | 9569.25                |
| 11/20/2009 02:10 | 9606                   |
| 11/20/2009 02:11 | 9549.5                 |
| 11/20/2009 02:12 | 9563.75                |
| 11/20/2009 02:13 | 9552.75                |
| 11/20/2009 02:14 | 9556.5                 |

| Time             | South Box Flow in SCFM |
|------------------|------------------------|
| 11/20/2009 02:15 | 9581                   |
| 11/20/2009 02:16 | 9596.5                 |
| 11/20/2009 02:17 | 9589.75                |
| 11/20/2009 02:18 | 9573                   |
| 11/20/2009 02:19 | 9594.75                |
| 11/20/2009 02:20 | 9577.25                |
| 11/20/2009 02:21 | 9597.25                |
| 11/20/2009 02:22 | 9575.5                 |
| 11/20/2009 02:23 | 9583                   |
| 11/20/2009 02:24 | 9573.5                 |
| 11/20/2009 02:25 | 9564                   |
| 11/20/2009 02:26 | 9576.75                |
| 11/20/2009 02:27 | 9563.25                |
| 11/20/2009 02:28 | 9580.75                |
| 11/20/2009 02:29 | 9575                   |
| 11/20/2009 02:30 | 9568.25                |
| 11/20/2009 02:31 | 9579.75                |
| 11/20/2009 02:32 | 9587.25                |
| 11/20/2009 02:33 | 9587                   |
| 11/20/2009 02:34 | 9577                   |
| 11/20/2009 02:35 | 9550.5                 |
| 11/20/2009 02:36 | 9575                   |
| 11/20/2009 02:37 | 9589.75                |
| 11/20/2009 02:38 | 9587.5                 |
| 11/20/2009 02:39 | 9564                   |
| 11/20/2009 02:40 | 9575.5                 |
| 11/20/2009 02:41 | 9574.25                |
| 11/20/2009 02:42 | 9592.5                 |
| 11/20/2009 02:43 | 9541.75                |
| 11/20/2009 02:44 | 9588.75                |
| 11/20/2009 02:45 | 9581                   |
| 11/20/2009 02:46 | 9546.5                 |
| 11/20/2009 02:47 | 9573.5                 |
| 11/20/2009 02:48 | 9573.25                |
| 11/20/2009 02:49 | 9571                   |
| 11/20/2009 02:50 | 9611                   |
| 11/20/2009 02:51 | 9585.75                |
| 11/20/2009 02:52 | 9592.25                |
| 11/20/2009 02:53 | 9579.25                |
| 11/20/2009 02:54 | 9593.5                 |
| 11/20/2009 02:55 | 9591                   |
| 11/20/2009 02:56 | 9571.5                 |
| 11/20/2009 02:57 | 9574.25                |
| 11/20/2009 02:58 | 9598.25                |

| Time             | South Box Flow in SCFM |
|------------------|------------------------|
| 11/20/2009 02:59 | 9588.25                |
| 11/20/2009 03:00 | 9601.75                |
| 11/20/2009 03:01 | 9593.75                |
| 11/20/2009 03:02 | 9599                   |
| 11/20/2009 03:03 | 9568                   |
| 11/20/2009 03:04 | 9576.5                 |
| 11/20/2009 03:05 | 9585.5                 |
| 11/20/2009 03:06 | 9585                   |
| 11/20/2009 03:07 | 9595.5                 |
| 11/20/2009 03:08 | 9571.25                |
| 11/20/2009 03:09 | 9590.75                |
| 11/20/2009 03:10 | 9584                   |
| 11/20/2009 03:11 | 9593                   |
| 11/20/2009 03:12 | 9563.75                |
| 11/20/2009 03:13 | 9574.5                 |
| 11/20/2009 03:14 | 9553.25                |
| 11/20/2009 03:15 | 9586.5                 |
| 11/20/2009 03:16 | 9573.75                |
| 11/20/2009 03:17 | 9584.5                 |
| 11/20/2009 03:18 | 9569.25                |
| 11/20/2009 03:19 | 9559.25                |
| 11/20/2009 03:20 | 9596.5                 |
| 11/20/2009 03:21 | 9580.25                |
| 11/20/2009 03:22 | 9589.25                |
| 11/20/2009 03:23 | 9569                   |
| 11/20/2009 03:24 | 9576.5                 |
| 11/20/2009 03:25 | 9575                   |
| 11/20/2009 03:26 | 9575.75                |
| 11/20/2009 03:27 | 9561.75                |
| 11/20/2009 03:28 | 9590.25                |
| 11/20/2009 03:29 | 9578                   |
| 11/20/2009 03:30 | 9576.5                 |
| 11/20/2009 03:31 | 9566                   |
| 11/20/2009 03:32 | 9578.25                |
| 11/20/2009 03:33 | 9562                   |
| 11/20/2009 03:34 | 9598.5                 |
| 11/20/2009 03:35 | 9572.25                |
| 11/20/2009 03:36 | 9572.25                |
| 11/20/2009 03:37 | 9554                   |
| 11/20/2009 03:38 | 9562.25                |
| 11/20/2009 03:39 | 9578.25                |
| 11/20/2009 03:40 | 9570.5                 |
| 11/20/2009 03:41 | 9566.5                 |
| 11/20/2009 03:42 | 9578.25                |

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## Carbon Breakthrough Event on November 19, 2009 - South Train

| Time             | South Box Flow in SCFM |
|------------------|------------------------|
| 11/20/2009 03:43 | 9572.25                |
| 11/20/2009 03:44 | 9571.75                |
| 11/20/2009 03:45 | 9551.75                |
| 11/20/2009 03:46 | 9589.25                |
| 11/20/2009 03:47 | 9565                   |
| 11/20/2009 03:48 | 9584.25                |
| 11/20/2009 03:49 | 9592                   |
| 11/20/2009 03:50 | 9581.75                |
| 11/20/2009 03:51 | 9580.25                |
| 11/20/2009 03:52 | 9592.75                |
| 11/20/2009 03:53 | 9583.75                |
| 11/20/2009 03:54 | 9563.25                |
| 11/20/2009 03:55 | 9563.5                 |
| 11/20/2009 03:56 | 9586                   |
| 11/20/2009 03:57 | 9557                   |
| 11/20/2009 03:58 | 9627.75                |
| 11/20/2009 03:59 | 9582                   |
| 11/20/2009 04:00 | 9562                   |
| 11/20/2009 04:01 | 9576.5                 |
| 11/20/2009 04:02 | 9550.25                |
| 11/20/2009 04:03 | 9562.25                |
| 11/20/2009 04:04 | 9586.25                |
| 11/20/2009 04:05 | 9556.5                 |
| 11/20/2009 04:06 | 9557                   |
| 11/20/2009 04:07 | 9609.25                |
| 11/20/2009 04:08 | 9566.5                 |
| 11/20/2009 04:09 | 9577.25                |
| 11/20/2009 04:10 | 9596.25                |
| 11/20/2009 04:11 | 9573                   |
| 11/20/2009 04:12 | 9606.5                 |
| 11/20/2009 04:13 | 9586.75                |
| 11/20/2009 04:14 | 9571.75                |
| 11/20/2009 04:15 | 9592.5                 |
| 11/20/2009 04:16 | 9594.5                 |
| 11/20/2009 04:17 | 9586.75                |
| 11/20/2009 04:18 | 9599                   |
| 11/20/2009 04:19 | 9595.5                 |
| 11/20/2009 04:20 | 9571.5                 |
| 11/20/2009 04:21 | 9584.75                |
| 11/20/2009 04:22 | 9554.5                 |
| 11/20/2009 04:23 | 9602.75                |
| 11/20/2009 04:24 | 9575.75                |
| 11/20/2009 04:25 | 9601.25                |
| 11/20/2009 04:26 | 9577.75                |

| Time             | South Box Flow in SCFM |
|------------------|------------------------|
| 11/20/2009 04:27 | 9573                   |
| 11/20/2009 04:28 | 9609.75                |
| 11/20/2009 04:29 | 9594.5                 |
| 11/20/2009 04:30 | 9569.75                |
| 11/20/2009 04:31 | 9575.25                |
| 11/20/2009 04:32 | 9581.5                 |
| 11/20/2009 04:33 | 9565                   |
| 11/20/2009 04:34 | 9601.5                 |
| 11/20/2009 04:35 | 9589.75                |
| 11/20/2009 04:36 | 9596.5                 |
| 11/20/2009 04:37 | 9577.25                |
| 11/20/2009 04:38 | 9587.75                |
| 11/20/2009 04:39 | 9581.5                 |
| 11/20/2009 04:40 | 9612.75                |
| 11/20/2009 04:41 | 9539.25                |
| 11/20/2009 04:42 | 9601.5                 |
| 11/20/2009 04:43 | 9566.75                |
| 11/20/2009 04:44 | 9594                   |
| 11/20/2009 04:45 | 9569.5                 |
| 11/20/2009 04:46 | 9587.25                |
| 11/20/2009 04:47 | 9583.25                |
| 11/20/2009 04:48 | 9590.5                 |
| 11/20/2009 04:49 | 9585                   |
| 11/20/2009 04:50 | 9593.25                |
| 11/20/2009 04:51 | 9588.5                 |
| 11/20/2009 04:52 | 9622.25                |
| 11/20/2009 04:53 | 9602                   |
| 11/20/2009 04:54 | 9576.25                |
| 11/20/2009 04:55 | 9590.75                |
| 11/20/2009 04:56 | 9579                   |
| 11/20/2009 04:57 | 9565.5                 |
| 11/20/2009 04:58 | 9578.5                 |
| 11/20/2009 04:59 | 9566.75                |
| 11/20/2009 05:00 | 9605.5                 |
| 11/20/2009 05:01 | 9584.25                |
| 11/20/2009 05:02 | 9587.75                |
| 11/20/2009 05:03 | 9597.25                |
| 11/20/2009 05:04 | 9583.5                 |
| 11/20/2009 05:05 | 9599.25                |
| 11/20/2009 05:06 | 9579.75                |
| 11/20/2009 05:07 | 9569                   |
| 11/20/2009 05:08 | 9594.5                 |
| 11/20/2009 05:09 | 9590.5                 |
| 11/20/2009 05:10 | 9575.25                |

| Time             | South Box Flow in SCFM |
|------------------|------------------------|
| 11/20/2009 05:11 | 9601                   |
| 11/20/2009 05:12 | 9582.75                |
| 11/20/2009 05:13 | 9588.75                |
| 11/20/2009 05:14 | 9543.75                |
| 11/20/2009 05:15 | 9582.5                 |
| 11/20/2009 05:16 | 9584.25                |
| 11/20/2009 05:17 | 9585.5                 |
| 11/20/2009 05:18 | 9602.75                |
| 11/20/2009 05:19 | 9565.5                 |
| 11/20/2009 05:20 | 9605                   |
| 11/20/2009 05:21 | 9588.75                |
| 11/20/2009 05:22 | 9573.75                |
| 11/20/2009 05:23 | 9596.75                |
| 11/20/2009 05:24 | 9579.25                |
| 11/20/2009 05:25 | 9585.5                 |
| 11/20/2009 05:26 | 9579.25                |
| 11/20/2009 05:27 | 9585.25                |
| 11/20/2009 05:28 | 9602.75                |
| 11/20/2009 05:29 | 9572.75                |
| 11/20/2009 05:30 | 9574.5                 |
| 11/20/2009 05:31 | 9569.75                |
| 11/20/2009 05:32 | 9595                   |
| 11/20/2009 05:33 | 9600.75                |
| 11/20/2009 05:34 | 9566.75                |
| 11/20/2009 05:35 | 9579.5                 |
| 11/20/2009 05:36 | 9598.75                |
| 11/20/2009 05:37 | 9588.75                |
| 11/20/2009 05:38 | 9580                   |
| 11/20/2009 05:39 | 9578                   |
| 11/20/2009 05:40 | 9582.5                 |
| 11/20/2009 05:41 | 9575                   |
| 11/20/2009 05:42 | 9568.5                 |
| 11/20/2009 05:43 | 9563                   |
| 11/20/2009 05:44 | 9585.5                 |
| 11/20/2009 05:45 | 9588.75                |
| 11/20/2009 05:46 | 9575.75                |
| 11/20/2009 05:47 | 9607                   |
| 11/20/2009 05:48 | 9581                   |
| 11/20/2009 05:49 | 9607.75                |
| 11/20/2009 05:50 | 9592                   |
| 11/20/2009 05:51 | 9566.5                 |
| 11/20/2009 05:52 | 9565.25                |
| 11/20/2009 05:53 | 9571.75                |
| 11/20/2009 05:54 | 9571.5                 |

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## Carbon Breakthrough Event on November 19, 2009 - South Train

| Time             | South Box Flow in SCFM |
|------------------|------------------------|
| 11/20/2009 05:55 | 9568.75                |
| 11/20/2009 05:56 | 9583.75                |
| 11/20/2009 05:57 | 9586.25                |
| 11/20/2009 05:58 | 9585.25                |
| 11/20/2009 05:59 | 9580.5                 |
| 11/20/2009 06:00 | 9593.5                 |
| 11/20/2009 06:01 | 9605.25                |
| 11/20/2009 06:02 | 9592                   |
| 11/20/2009 06:03 | 9604                   |
| 11/20/2009 06:04 | 9582                   |
| 11/20/2009 06:05 | 9609.75                |
| 11/20/2009 06:06 | 9567.75                |
| 11/20/2009 06:07 | 9594.75                |
| 11/20/2009 06:08 | 9591.75                |
| 11/20/2009 06:09 | 9573.5                 |
| 11/20/2009 06:10 | 9580.5                 |
| 11/20/2009 06:11 | 9593                   |
| 11/20/2009 06:12 | 9568.5                 |
| 11/20/2009 06:13 | 9597                   |
| 11/20/2009 06:14 | 9582.25                |
| 11/20/2009 06:15 | 9597.75                |
| 11/20/2009 06:16 | 9589.5                 |
| 11/20/2009 06:17 | 9575                   |
| 11/20/2009 06:18 | 9596.25                |
| 11/20/2009 06:19 | 9579                   |
| 11/20/2009 06:20 | 9581                   |
| 11/20/2009 06:21 | 9613                   |
| 11/20/2009 06:22 | 9581.5                 |
| 11/20/2009 06:23 | 9616.5                 |
| 11/20/2009 06:24 | 9585                   |
| 11/20/2009 06:25 | 9598.5                 |
| 11/20/2009 06:26 | 9576.75                |
| 11/20/2009 06:27 | 9595                   |
| 11/20/2009 06:28 | 9558.75                |
| 11/20/2009 06:29 | 9582                   |
| 11/20/2009 06:30 | 9597                   |
| 11/20/2009 06:31 | 9557.25                |
| 11/20/2009 06:32 | 9590.75                |
| 11/20/2009 06:33 | 9579                   |
| 11/20/2009 06:34 | 9610                   |
| 11/20/2009 06:35 | 9608.5                 |
| 11/20/2009 06:36 | 9606.75                |
| 11/20/2009 06:37 | 9615                   |
| 11/20/2009 06:38 | 9598.5                 |

| Time             | South Box Flow in SCFM |
|------------------|------------------------|
| 11/20/2009 06:39 | 9555                   |
| 11/20/2009 06:40 | 9565.5                 |
| 11/20/2009 06:41 | 9587.25                |
| 11/20/2009 06:42 | 9614                   |
| 11/20/2009 06:43 | 9626.75                |
| 11/20/2009 06:44 | 9579.5                 |
| 11/20/2009 06:45 | 9589.5                 |
| 11/20/2009 06:46 | 9592                   |
| 11/20/2009 06:47 | 9576.75                |
| 11/20/2009 06:48 | 9585.75                |
| 11/20/2009 06:49 | 9594.5                 |
| 11/20/2009 06:50 | 9588.75                |
| 11/20/2009 06:51 | 9601                   |
| 11/20/2009 06:52 | 9588                   |
| 11/20/2009 06:53 | 9610.25                |
| 11/20/2009 06:54 | 9597.5                 |
| 11/20/2009 06:55 | 9589                   |
| 11/20/2009 06:56 | 9593                   |
| 11/20/2009 06:57 | 9587.25                |
| 11/20/2009 06:58 | 9569                   |
| 11/20/2009 06:59 | 9561.75                |
| 11/20/2009 07:00 | 9544.75                |
| 11/20/2009 07:01 | 9551.75                |
| 11/20/2009 07:02 | 9525.25                |
| 11/20/2009 07:03 | 9549.75                |
| 11/20/2009 07:04 | 9564.25                |
| 11/20/2009 07:05 | 9470                   |
| 11/20/2009 07:06 | 4016.4375              |

| Time | South Box Flow in SCFM |
|------|------------------------|
|------|------------------------|

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## HERITAGE-WTI, Inc.

1250 St. George Street  
East Liverpool, Ohio 43920-3400  
Phone: 330-385-7337  
Fax: 330-385-7813  
Web Site: www.heritage-wti.com

ISO 9001



ISO 14001

February 12, 2010  
VIA PRIORITY MAIL  
RETURN RECEIPT REQUESTED

Chief, Environmental Enforcement Section  
Environmental and Natural Resources Division  
U.S. Department of Justice  
Box 7611 Ben Franklin Station  
Washington, D.C. 20044-7611  
Re: DOJ No. 90-5-2-1-08743

John Matson  
Associate Regional Counsel  
U.S. Environmental Protection Agency – Region 5  
77 West Jackson Blvd.  
Mail Code C-14J  
Chicago, IL 60604-3590

Charles Hall  
U.S. Environmental Protection Agency – Region 5  
77 West Jackson Blvd.  
Mail Code AE-17J  
Chicago, IL 60604-3590

Michael Cunningham  
U.S. Environmental Protection Agency – Region 5  
77 West Jackson Blvd.  
Mail Code DE-9J  
Chicago, IL 60604-3590

**RE: Request for Termination and Notice Pursuant to Paragraph 111**

Dear Gentlemen:

Heritage-WTI, Inc. ("WTI"), hereby submits its Request for Termination of the Consent Decree in Case No. 4:06 CV 2893 (the "Consent Decree") as specified in Paragraph 116 of the Consent Decree. Paragraph 116 provides as follows:

"After Von Roll has maintained continuous satisfactory compliance with this Consent Decree for a period of three years after the Effective Date of this Consent Decree, has complied with all other requirements of this Consent Decree, including those relating to the SEP required by Section V of this Consent Decree, and has paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, Von Roll may serve upon the United States a Request for Termination, stating that Von Roll has satisfied those requirements, together with all necessary supporting documentation."

The effective date of the Consent Decree was February 2, 2007. Because the time period following the effective date identified in Paragraph 116 has elapsed and because WTI has complied with all of the terms contained in the Consent Decree, the filing of this Request for Termination is appropriate. The necessary supporting documentation required by Paragraph 116 either is enclosed or, if previously submitted to the United States pursuant to the terms of the

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Consent Decree, identified. WTI's compliance with the various terms of the Consent Decree are discussed in the attached table.

Pursuant to Paragraph 111 of the Consent Decree, WTI hereby provides notice that Laurence McHugh can be removed from the list of WTI recipients for notifications, submissions, or communications because Mr. McHugh retired from Barnes & Thornburg LLP at the end of 2009 and no longer is involved with this case.

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| Paragraph Number                            | Paragraph Requirement   | Comments   |
|---|---|--|
| <b>II. Applicability and Binding Effect</b> |   |  |
| 5   | Requirements concerning the transfer of ownership or operations of the facility.  | No transfers in the ownership or operation of the facility have occurred. As discussed in a January 29, 2008 letter, the name of the corporation was changed from Von Roll America, Inc. to Heritage-WTI, Inc.   |
| 6   | Requirement to provide copies of relevant portions of the Consent Decree and a copy of the Routine Maintenance Procedure to certain individuals and to condition contacts for work performed under the Consent Decree that such work must be performed in conformance with the Consent Decree | WTI provided relevant portions of the Consent Decree and a copy of the Routine Maintenance Procedure to the required individuals. In addition, WTI provided training on the Routine Maintenance Procedure and training on the Consent Decree. WTI annually reviews all SOPs including the Routine Maintenance Procedure.   |
| <b>IV. Compliance Requirements</b>          |   |  |
| 9   | All Facility Tanks as defined by the Consent Decree (hereafter "Facility Tanks") are subject to Benzene NESHAP (If Benzene NESHAP not applicable, comply with RCRA counterpart if applicable)   | WTI complies with this requirement. All Facility Tanks are operated in compliance with 40 CFR 264 Subpart CC or 40 CFR 61 Subpart FF.  |
| 10  | All vapors from the Facility Tanks are routed through a closed vent system to enclosed combustion device (kila) and/or carbon system (40 CFR 61.349 or RCRA Subpart CC if Benzene NESHAP no longer applicable)  | WTI complies with this requirement. All vapors are routed through the facility's vapor recovery system, a closed vent system, and transferred to either the carbon adsorption system or to the incinerator. Both of these devices are designed and operated in compliance with 40 CFR 61.349.  |
| 11  | Carbon system is to be installed, operated, and maintained in accordance with 40 CFR 61.349 and 61.354 (or RCRA Subpart CC if the Benzene NESHAP is not applicable), the Consent Decree, and WTI Routine Maintenance Procedure for Vapor Recovery Management (RS-100).                        | WTI notified the US EPA in an e-mail on January 11, 2007 that the facility has installed a carbon adsorption system and operates this system and closed vent system in accordance with 40 CFR 61.349 and 61.354, the terms and conditions of this Consent Decree, and WTI's Routine Maintenance Procedure for Vapor Recovery Management. The description of the carbon adsorption system also was included in the March 1, 2007 letter submitted to EPA reporting on the carbon adsorption system. |

| Paragraph Number | Paragraph Requirement   | Comments  |
|------------------|---|---|
| 12               | WTI must comply with 40 CFR 61.343(e) including performing Procedure T (Appendix B of 40 CFR 52.741) on the Waste Pit Tanks annually.   | WTI is in compliance with this requirement. The dates WTI performed the Procedure T on the Waste Pit Tanks (Bulk Solid Pits) are:<br>May 21, 2007<br>April 24, 2008<br>April 6, 2009                      |
| 13               | Install, operate and maintain two or more trains in series -- boxes shall be same size and have maximum design flow rate of no less than 10,000 CFM   | See comment associated with Paragraph 11 and the March 1, 2007 letter submitted to EPA reporting on the carbon adsorption system.   |
| 14               | Within 30 days of the Date of Entry, provide US EPA with a detailed description of the carbon adsorption system including carbon box manufacturer, carbon box size, maximum design flow rate of each box, and type of carbon used   | This information was submitted to the US EPA by WTI in a letter dated March 1, 2007.  |
| 15               | Operate sufficient number of trains so flow rate cannot exceed box design capacity when fans/blowers operating at design capacity. Do not need carbon system if all vapors are routed to kiln. Can operate one when kiln operating or when air flow to carbon boxes is less than maximum design flow rate for single box. | See comment associated with Paragraph 11 and the March 1, 2007 letter submitted to EPA reporting on the carbon adsorption system.   |
| 16               | If only one train is in operation and the other is out of service for carbon change-out and the kiln goes off-line, WTI shall as expeditiously as possible, reduce flow to carbon system so it does not exceed maximum design flow rate of train in service.  | WTI is in compliance with the requirement. WTI operates the carbon Adsorption System in accordance with SOP RS-100 as approved by US EPA.   |
| 17               | Within 30 days of the Date of Entry, WTI must install and operate the between boxes THC monitors (inter-Box CEMS)   | The Inter-Box CEMS were installed prior to the Date of Entry and certified on December 20, 2006. WTI submitted information regarding the Inter-Box CEMS in the March 1, 2007 letter previously mentioned. |
| 18               | Breakthrough is 50 ppm or greater THC on 60-minute rolling average between the boxes (Inter-Box CEMS)   | WTI uses 50 ppm or greater THC on a 60-minute rolling average between the boxes (Inter-Box CEMS) as the concentration constituting breakthrough.  |
| 19               | Direct inter-box CEMS data to facility control system and maintain an alarm system in Facility's Control System to sound whenever breakthrough is detected.   | This requirement was completed December 21, 2006.   |

| Paragraph Number | Paragraph Requirement   | Comments  |
|------------------|---|---|
| 20               | Record "No Flow" on boxes not in service or being used  | WTI is in compliance. WTI records a 'No Flow' for the Inter-Box CEMS associated with the carbon train not in use.   |
| 21               | Immediately change out primary carbon box when breakthrough is indicated. Immediately is defined as 12 hours and 48 hrs as in 5.1.1, 5.1.2, and 5.2 of Routine Maintenance Procedure for Vapor Recovery Management (RS-100).  | See comment associated with Paragraph 16.   |
| 22               | Within 15 days of changing a primary box, a reading of 50 ppm or greater on a 60 minute rolling average shall not constitute a change out (must be investigated to make this determination).  | WTI has not had the need to utilize this condition.   |
| 24               | WTI shall maintain fresh carbon or spare carbon box containing fresh carbon on-site required for an immediate change out. Applies at all times except for reasonable time needed to secure carbon and/or additional carbon box containing fresh carbon after a change out has occurred. | WTI complies with this requirement: The Carbon Adsorption System in place at the facility requires the use of four (4) carbon boxers. However, WTI has five (5) carbon boxes for use in the Carbon Adsorption System. The spare carbon box contains the correct amount of carbon based on the design of the carbon box. |
| 25               | WTI must seek US EPA approval for material modifications of portions of the Consent Decree or the Routine Maintenance Procedure.  | WTI has not requested any material modifications.   |
| 27               | WTI can invoke the Dispute Resolution provisions if it objects with EPA's decision concerning a material modification request.  | See comment for Paragraph 25.   |
|                  | If US EPA does not respond within 90 days, WTI can consider the material modification approved and request a revision to the Consent Decree from the court.   | See comment for Paragraph 25.   |
| 28               | Nonmaterial modification do not need to be approved by EPA or the court. WTI must submit a new Routine Maintenance Procedure for Vapor Recovery Management (RS-100) to US EPA within 30 days of making the change (must reference paragraph 30 in the Consent Decree in the letter)     | By letter dated March 9, 2007, WTI notified EPA of non-material modifications to the Routine Maintenance Procedure, described the non-material modifications, and provided EPA with the revised Routine Maintenance Procedure.  |
| 30               | Spent carbon must be managed as hazardous waste. WTI may incinerate the carbon so long as the RCRA permits allow.   | All carbon removed from the Carbon Adsorption system was processed through WTI's incineration system. See Attachment A for the Carbon Disposal Log.   |
| 31               |   |   |

| Paragraph Number                             | Paragraph Requirement  | Comments  |
|--|--|---|
| 32   | WTI must operate and maintain the THC monitor in the exhaust stack (Outlet-CEMS) and use its data to evaluate and verify the effectiveness of the carbon adsorption system.  | See comment for Paragraph 17 and the March 1, 2007 letter to EPA.   |
| 33   | Upon installation, WTI must certify, calibrate, maintain, and operate Inter-box CEMS per applicable portions of 40 CFR 60.13, Appendix B & F. Use PS 8A, Section 6, instead of other RATA procedure. Comply with PS 8A except as identified in subparagraphs a. through d.   | See comment for Paragraph 17 and the March 1, 2007 letter to EPA.   |
| 34   | Calibrate, maintain, and operate Outlet CEM per manufacturer's recommended procedures.   | WTI is in compliance with this requirement. This calibration is performed quarterly, as recommended by the manufacturer, or more frequently.  |
| 35   | Keep records of CEMS data for no less than three years and provide data to EPA upon request  | WTI is in compliance with this requirement. WTI records the required CEMS data.   |
| 36   | Life of Consent Decree, WTI must record and retain records of each date and time of breakthrough; flow rate (per fans or blowers or flow monitoring device) to primary box at time of breakthrough until change out commences; date, time, duration of each change out; and results of investigations (see item 22 above).                 | WTI is in compliance with this requirement. This information is maintained at the facility. This information is also submitted to the US EPA in the quarterly report required under Paragraph 47.   |
| 37   | Do not oppose, appeal, or seek review of the amendment to the PTL to incorporate the use of an "in series" carbon adsorption system and definition of breakthrough and cooperate fully with OEPA regarding this amendment. Take any steps necessary to and within WTI's control to amend the Title V permit to be consistent with the PTL. | WTI is in compliance with this requirement. WTI's Title V Permit, 0215020233, was renewed January 12, 2009 and contained language regarding the operation of the Carbon Adsorption System and the Consent Decree requirements. The facility's PTL, No. 02-18743, was renewed March 22, 2007 and it also contained language regarding the operation of the Carbon Adsorption System and the Consent Decree requirements. |
| <b>V. Supplemental Environmental Project</b> |  |   |
| 38   | WTI must implement a SEP in the fall of 2007 - Hold a Household Hazardous Waste Collection event no more than 25 miles from the facility. Must follow all applicable requirements. Project shall cost no less than \$34,000.   | WTI completed the approved SEP on October 6, 2007 in Lisbon Ohio. The total cost for the SEP was greater than \$50,000.   |
| 39   | Must complete the SEP  | See comment for Paragraph 38.   |
| 41   | Submit SEP completion report containing the information identified in subparagraphs a. through e. within 30 days after the date of the HHW Collection  | WTI is in compliance. See SEP completion report submitted to US EPA in a letter dated November 1, 2007.   |

| Paragraph Number           | Paragraph Requirement  | Comments   |
|----------------------------|--|--|
| 42                         | WTI must submit additional information if required by US EPA.  | Additional information was not required by EPA.  |
| 45                         | Certification must be signed by an official with knowledge of the SEP and use language in Consent Decree paragraph 51  | See comment for Paragraph 41 and the November 1, 2007 letter submitted to US EPA.  |
| 46                         | Public statements must include specific language referencing the SEP. See paragraph 46 of the Consent Decree for language.   | WTI is in compliance with this requirement. The statement referenced in Paragraph 46 was included on the advertisements associated with the SEP.   |
| VI. Reporting Requirements |  |  |
| 47                         | 30 days after end of each calendar quarter, WTI must submit a report containing or attaching the information required by paragraph 36 of the Consent Decree. If no event occurred, a report is still required stating that fact. | WTI is in compliance with this requirement. The quarterly reports were submitted to the required parties in letters dated:<br>April 13, 2007<br>July 26, 2007<br>October 11, 2007<br>January 29, 2008<br>April 10, 2008<br>July 24, 2008<br>October 9, 2008<br>January 13, 2009<br>April 2, 2009<br>July 1, 2009<br>October 14, 2009<br>January 26, 2010 |
| 48                         | Must submit a written notification within 10 days of discovery of a violation or anticipate violation of the Consent Decree. The information to include in the notification is in Consent Decree paragraph 48.                   | WTI submitted two letters under requirements of Paragraph 48. The first was dated June 29, 2007 and the second was dated June 16, 2009.  |
| 49                         | If violation of Consent Decree or other event at WTI poses an immediate threat to public health or welfare or the environment, WTI must orally notify US EPA within 24 hrs   | No event at the WTI facility caused an implementation of this requirement.   |
| 50                         | All reports are submitted to the persons listed in Consent Decree Section XIV.   | WTI is in compliance with this requirement. All reports under this Consent Decree have been submitted to the parties listed in Section XIV as revised by US EPA.   |

| Paragraph Number                 | Paragraph Requirement  | Comments   |
|----------------------------------|--|--|
| 51                               | Each report must contain the language in paragraph 51 of Consent Decree.   | WTI is in compliance with this requirement. All reports submitted under this Consent decree have been submitted with the certification required under Paragraph 51.  |
| VII. Civil Penalty               |  |  |
| 54                               | WTI must pay \$750,000 within 30 days after Date of Entry. Payment and notification of payment requirements in Consent Decree paragraph 54.  | WTI is in compliance with this requirement. The civil penalty of \$750,000 was paid by Electronic Funds Transfer (EFT) to US Department of Justice on February 27, 2007 and a letter was submitted to US EPA dated March 2, 2007 documenting the payment of the civil penalty. |
| 55                               | WTI must pay interest if the civil penalty is not paid on time.  | Because the payment was paid on time, WTI was not required to pay interest.  |
| 57                               | WTI shall not deduct the civil penalty in calculating its federal income tax.  | WTI is in compliance with this requirement.  |
| VIII. Stipulated Penalties       |  |  |
| 58 - 87                          | Various stipulated penalties for failing to comply with the various conditions of the Consent Decree.  | No event at the WTI facility caused an implementation of these requirements.   |
| IX. Force Majeure Beyond Control |  |  |
| 89                               | Must notify US EPA orally or by electronic or fax communication within 72 hours of an event outside WTI's control that delays the performance of requirements contained in the Consent Decree. Must follow-up with written notice within 7 days. Consent Decree paragraph 89 contains information to include in notices. | No event at the WTI facility caused an implementation of this requirement.   |

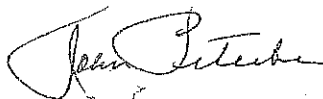
| Paragraph Number             | Paragraph Requirement   | Comments  |
|------------------------------|---|---|
| X. Dispute Resolution        |   | No event at the WTI facility caused an implementation of these requirements.  |
| 92 - 99                      | Dispute Resolution section  |   |
| XIII. Costs                  |   | WTI is in compliance with this requirement.   |
| 109                          | Costs   |   |
| XIV. Notices and Submissions |   | WTI is in compliance with this requirement. This letter contains the only change of designated notice recipient or address made by WTI. |
| 111                          | WTI may change its designated notice recipient or notice address.   |   |
| XVII. Termination            |   |   |
| 116 - 118                    | WTI may request termination of Consent Decree after 3 yrs (after Consent Decree's effective date) of satisfactory compliance, completion of SEP, and payment of all penalties. Information to include in request for termination is contained in Consent Decree paragraph 116. Paragraphs 117 and 118 contain requirements that apply to the Termination decision-making process. | This letter constitutes WTI's submission pursuant to Paragraph 116.   |



I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If you have any questions regarding this letter, please contact me at the above number.

Sincerely,

A handwritten signature in dark ink, appearing to read "John Peterka". The signature is fluid and cursive, with a large initial "J" and a stylized "P".

John Peterka  
President  
Heritage - WTI, Inc.

cc: John Peterka – Heritage - WTI, Inc.  
Michael Scanlon – Barnes & Thornburg LLP

EPA-R5ORC-AE2010-511

ATTACHMENT A  
CARBON DISPOSAL LOG

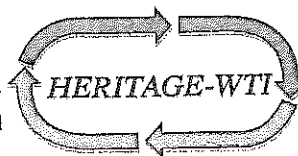
# Carbon Disposal Log

| Profile (36765-271)       |   |                        |           | Subpart X or Subpart O |
|---------------------------|---|------------------------|-----------|------------------------|
| Date of Carbon Change-Out |   |                        |           |                        |
| February 2-3, 2007        | 18,420 lbs (includes container weights)<br>(Unused carbon from box 37186<br>[C000029] was placed in containers for<br>future use. This carbon, along with the<br>containers, ultimately were disposed of<br>in stead of being reused. Please see<br>1/5/07 change out memo) | Von Roll America, Inc. | Subpart O |                        |
| February 2, 2007          | 24,280 lbs (Disposed of on 3/15/07)<br>(C000026 & C000027)  | Von Roll America, Inc. | Subpart O |                        |
| February 18, 2007         | 12,200 lbs (Disposed of on 3/15/07)<br>(C000028)  | Von Roll America, Inc. | Subpart O |                        |
| March 4, 2007             | 12,820 lbs (Disposed of on 3/15/07)<br>(C000030)  | Von Roll America, Inc. | Subpart O |                        |
| June 13, 2007             | 12,000 lbs (C000033)  | Von Roll America, Inc. | Subpart O |                        |
| June 19, 2007             | 13,420 lbs (C000034)  | Von Roll America, Inc. | Subpart O |                        |
| June 20, 2007             | 28,260 lbs (C000032 and C000031)  | Von Roll America, Inc. | Subpart O |                        |
| June 23, 2007             | 24,120 lbs (C000035 and C000036)  | Von Roll America, Inc. | Subpart O |                        |
| June 27, 2007             | 13,720 lbs (C000037)  | Von Roll America, Inc. | Subpart O |                        |
| April 28, 2008            | 14,300 lbs (C000039)  | Heritage -- WTL, Inc.  | Subpart O |                        |
| June 6, 2008              | 14,400 lbs (C000040)  | Heritage -- WTL, Inc.  | Subpart O |                        |
| November 20, 2009         | 11,400 lbs (C00042)<br>14,900 lbs (C00044)<br>13,360 lbs (C00043)   | Heritage -- WTL, Inc.  | Subpart O |                        |
| November 21, 2009         | 13,300 lbs (C00041)   | Heritage -- WTL, Inc.  | Subpart O |                        |

## HERITAGE-WTI, Inc.

1250 St. George Street  
East Liverpool, Ohio 43920-3400  
Phone: 330-385-7337  
Fax: 330-385-7813  
Web Site: www.heritage-wti.com

ISO 9001



ISO 14001

April 23, 2010  
VIA PRIORITY MAIL  
RETURN RECEIPT REQUESTED

Chief, Environmental Enforcement Section  
Environmental and Natural Resources Division  
U.S. Department of Justice  
Box 7611 Ben Franklin Station  
Washington, D.C. 20044-7611  
Re: DOJ No. 90-5-2-1-08743

John Matson  
Associate Regional Counsel  
U.S. Environmental Protection Agency – Region 5  
77 West Jackson Blvd.  
Mail Code C-14J  
Chicago, IL 60604-3590

Charles Hall  
U.S. Environmental Protection Agency – Region 5  
77 West Jackson Blvd.  
Mail Code AE-17J  
Chicago, IL 60604-3590

Michael Cunningham  
U.S. Environmental Protection Agency – Region 5  
77 West Jackson Blvd.  
Mail Code DE-9J  
Chicago, IL 60604-3590

### **RE: Consent Decree Reporting Requirement**

Dear Gentlemen:

This report is being submitted in accordance with Paragraph 47 of the Consent Decree, Case No. 4:06CV2893.

Paragraph 47 requires Heritage – WTI, Inc. (WTI) to submit a quarterly report to the US EPA containing records of (i) each date and time that breakthrough occurs; (ii) the flow rate to the primary box (as determined by either the fan(s) or blower(s) or a flow monitoring device to the primary box) at the time of each breakthrough event and continuing until the change-out procedure commences; (iii) the date, time, and duration of each change-out; and (iv) the results of each investigation undertaken pursuant to the requirement of Paragraph 22.

There were no carbon box change out events from January 1, 2010 through March 31, 2010.

There were no investigations undertaken pursuant to the requirement of Paragraph 22.

EPA-R5ORC-AE2010-514

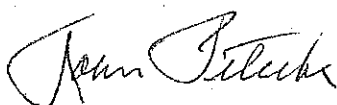


Recycled Paper

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are certain penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If you have any questions regarding this letter, please contact me at the above number.

Sincerely,



John Peterka  
President  
Heritage – WTI, Inc.

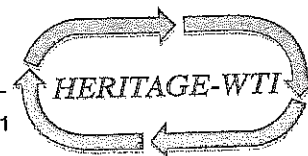
cc: John Peterka – Heritage - WTI, Inc.  
Laurence McHugh – Barnes & Thornburg LLP  
Michael Scanlon – Barnes & Thornburg LLP

EPA-R5ORC-AE2010-515

HERITAGE-WTI, Inc.

1250 St. George Street  
East Liverpool, Ohio 43920-3400  
Phone: 330-385-7337  
Fax: 330-385-7813  
Web Site: www.heritage-wti.com

ISO 9001



ISO 14001

July 15, 2010  
VIA PRIORITY MAIL  
RETURN RECEIPT REQUESTED

Chief, Environmental Enforcement Section  
Environmental and Natural Resources Division  
U.S. Department of Justice  
Box 7611 Ben Franklin Station  
Washington, D.C. 20044-7611  
Re: DOJ No. 90-5-2-1-08743

Charles Hall  
U.S. Environmental Protection Agency – Region 5  
77 West Jackson Blvd.  
Mail Code AE-17J  
Chicago, IL 60604-3590

John Matson  
Associate Regional Counsel  
U.S. Environmental Protection Agency – Region 5  
77 West Jackson Blvd.  
Mail Code C-14J  
Chicago, IL 60604-3590

Michael Cunningham  
U.S. Environmental Protection Agency – Region 5  
77 West Jackson Blvd.  
Mail Code DE-9J  
Chicago, IL 60604-3590

**RE: Consent Decree Reporting Requirement**

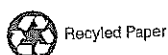
Dear Gentlemen:

This report is being submitted in accordance with Paragraph 47 of the Consent Decree, Case No. 4:06CV2893.

Paragraph 47 requires Heritage – WTI, Inc. (WTI) to submit a quarterly report to the US EPA containing records of (i) each date and time that breakthrough occurs; (ii) the flow rate to the primary box (as determined by either the fan(s) or blower(s) or a flow monitoring device to the primary box) at the time of each breakthrough event and continuing until the change-out procedure commences; (iii) the date, time, and duration of each change-out; and (iv) the results of each investigation undertaken pursuant to the requirement of Paragraph 22.

In early May of 2010, the United States and WTI filed a joint motion to terminate the consent decree with the United States District Court, Northern District of Ohio, Eastern Division. On May 6, 2010, the court issued an order terminating the consent decree. Therefore, this quarterly report covers the time period from April 1, 2010 through May 6, 2010 and is the last quarterly report that will be filed pursuant to the consent decree.

EPA-R5ORC-AE2010-516



There were no carbon box change out events from April 1, 2010 through May 6, 2010.  
There were no investigations undertaken pursuant to the requirement of Paragraph 22.

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If you have any questions regarding this letter, please contact me at the above number.

Sincerely,



John Peterka  
President  
Heritage – WTI, Inc.

cc: John Peterka – Heritage - WTI, Inc.  
Michael Scanlon – Barnes & Thornburg LLP

40 APR 20 2010  
EPA-R5ORC-AE2010-517

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

FILED  
2007 DEC -1 PM 1:19  
CLERK OF DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
AKRON

UNITED STATES OF AMERICA,

Plaintiff,

v.

VON ROLL AMERICA, INC.,

Defendant.

Case No.

Judge

Magistrate Judge

4:06 CV 2893

JUDGE ECONOMUS

MAG. JUDGE LIMBERT

**NOTICE OF LODGING OF CONSENT DECREE**

The United States hereby lodges with the Court a Consent Decree, which, if entered, will completely resolve the claims of the United States against Settling Defendant Von Roll America, Inc. ("Von Roll"). The Consent Decree has been signed by representatives of the United States and Von Roll.

In accordance with 28 C.F.R. § 50.7, Department of Justice policy, and Paragraph 119 of the Consent Decree, however, the approval of the United States remains subject to public notice and comment. Specifically, this Consent Decree has been lodged so that the United States Department of Justice may present the Decree to the public for comment, by publication of a "Notice of Lodging" in the Federal Register. The public comment period in the Federal Register will run for thirty days after the initial publication of the Notice.

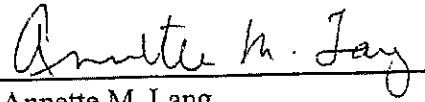
Accordingly, the Consent Decree should not be entered at this time. After notification of the public and review of public comments -- if any are submitted -- the United States will advise



CERTIFICATE OF SERVICE

I, Annette M. Lang, hereby certify that on this 1st day of December 2006, I caused a true copy of the foregoing Notice of Lodging of Consent Decree, together with the attached Consent Decree, to be sent by first-class mail, postage pre-paid, to the following counsel of record:

Lawrence McHugh  
Barnes & Thornburgh, L.L.P.  
100 North Michigan Street, Suite 600  
South Bend, IN 46601-1632

  
Annette M. Lang

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CONSENT DECREE

WHEREAS, Plaintiff the United States of America ("United States"), on behalf of the United States Environmental Protection Agency ("U.S. EPA"), filed a Complaint simultaneously with this Consent Decree against Defendant Von Roll America, Inc. ("Von Roll") seeking civil penalties and injunctive relief for alleged violations of the Clean Air Act, as amended ("CAA"), 42 U.S.C. §§ 7401 *et seq.*, and the Resource Conservation and Recovery Act, as amended ("RCRA"), 42 U.S.C. §§ 6901 *et seq.*, at Von Roll's hazardous waste treatment, storage, and disposal facility in East Liverpool, Ohio (the "Facility");

WHEREAS, the Complaint alleges that Von Roll violated and currently is in violation of provisions of the National Emission Standard for Benzene Waste Operations, codified at 40 C.F.R. Part 61, Subpart FF (the "Benzene Waste Operations NESHAP," or "Subpart FF");

WHEREAS, the Complaint also alleges that, in the past, Von Roll violated various RCRA provisions, including provisions setting forth air emission standards for certain tanks, surface impoundments and containers found at 40 C.F.R. Part 265, Subpart CC;

WHEREAS, Von Roll neither admits nor denies the alleged violations nor any factual allegations contained in the Complaint filed simultaneously with this Consent Decree;

WHEREAS, consistent with 40 C.F.R. § 264.1080(b)(7) and § 265.1080(b)(7), Von Roll previously elected to render the provisions of 40 C.F.R. Part 264, Subpart CC, and 40 C.F.R. Part 265, Subpart CC, inapplicable to the Facility's Tanks by certifying that these waste management units are equipped with and operating air emission controls in accordance with the requirements of the Benzene Waste Operations NESHAP;

judicial district and the alleged violations took place here. For purposes of this Decree, or any action to enforce this Decree, Von Roll consents to the Court's jurisdiction and to venue in this judicial district.

2. For purposes of this Consent Decree, Von Roll agrees that the Complaint states claims upon which relief may be granted under the CAA and RCRA.

3. Notice of the commencement of this action has been given to the Ohio Environmental Protection Agency ("Ohio EPA") in accordance with Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

## **II. APPLICABILITY AND BINDING EFFECT**

4. The obligations of this Consent Decree apply to and are binding upon the United States and upon Von Roll and any successors, assigns, or other entities or persons otherwise bound by law.

5. No transfer of ownership or operation of the Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Von Roll of its obligation to ensure that the terms of this Decree are implemented unless: (i) the transferee agrees to undertake the obligations required by this Decree and to be substituted for Von Roll as the defendant under the Decree and thus be bound by the terms thereof; and (ii) the United States consents to relieve Von Roll of its obligations. At least 30 days prior to such transfer, Von Roll shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed court order substituting the transferee as the defendant, to U.S. EPA and the United States Department of Justice in

c. "Consent Decree" or "Decree" shall mean this decree and all appendices attached hereto.

d. "Date of Entry" shall mean the date this Consent Decree is entered by the Clerk of the Court of the United States District Court for the Northern District of Ohio.

e. "Date of Lodging" shall mean the date this Consent Decree is filed for lodging with the Clerk of the Court of the United States District Court for the Northern District of Ohio.

f. "Day" shall mean a calendar day unless expressly stated to be a working day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

g. "Facility" shall mean the hazardous waste treatment, storage, and disposal facility that Von Roll owns and operates at 1250 St. George St., East Liverpool, Ohio.

h. "Facility's Tanks" shall mean the Fixed Roof Tanks and the Waste Pit Tanks.

i. "Fixed Roof Tanks" shall mean the twenty-three hazardous waste storage tanks with fixed roofs that Von Roll currently owns and operates at the Facility and any fixed roof hazardous waste tank that Von Roll may install and operate during the life of this Consent Decree that would be subject to the requirements of either 40 C.F.R. Part 61, Subpart FF; 40 C.F.R. Part 264, Subpart CC; or 40 C.F.R. Part 265, Subpart CC. The twenty-three fixed roof hazardous waste storage tanks currently at the Facility have the following identification numbers: T-1 through T-18 and PT-1 through PT-5. To the extent that, during the life of this Decree, any

q. "THC" shall mean Total Hydrocarbons.

r. "U.S. EPA" shall mean the United States Environmental Protection Agency and any of its successor departments or agencies.

s. "Waste Pit Tanks" shall mean the two tanks that Von Roll owns and operates within an enclosure for the purpose of storing bulk solid hazardous waste prior to incineration and which have identification numbers 1501 and 1502. To the extent that, during the life of this Decree, both of these two tanks no longer are used as hazardous waste tanks and no longer serve as waste management units for benzene-containing wastes, then there shall be no "Waste Pit Tanks," as defined in this Decree, at the Facility on and after the date of the change in service.

#### IV. COMPLIANCE REQUIREMENTS

9. To the extent that any action occurs in the future to render the Benzene Waste Operations NESHAP inapplicable to the Facility's Tanks either individually or collectively, those Tanks that no longer are subject to the Benzene Waste Operations NESHAP immediately will be subject to all applicable U.S. EPA and Ohio EPA requirements then in effect, including all applicable requirements of RCRA.

10. Von Roll shall route all vapors from the Facility's Tanks through a closed-vent system and control device designed and operated in accordance with the requirements of 40 C.F.R. § 61.349, or, if and when applicable to the Facility's Fixed Roof Tanks, 40 C.F.R. §§ 265.1085 and 265.1088 or 40 C.F.R. §§ 264.1084 and 264.1087. Nothing in this Consent Decree is intended to prohibit Von Roll from continuing to use its enclosed combustion device and the carbon adsorption system described in this Decree for purposes of complying with 40

14. By no later than 30 days after the Date of Entry of this Consent Decree, Von Roll shall submit to U.S. EPA a report describing with specificity the carbon adsorption system that Von Roll installs in compliance with Paragraph 13, including but not limited to carbon box manufacturer, carbon box size, maximum design flow rate of each carbon box, and type of carbon used.

15. Except for the limited circumstances and time periods specified in Paragraph 16, for the life of this Consent Decree, Von Roll shall operate a sufficient number of trains to ensure that the maximum flow rate through each primary carbon box does not exceed the manufacturer's recommended maximum design air flow rate when the fans and/or blowers that direct the waste vapors from the Facility's process and storage areas into the carbon boxes operate at their maximum rate. Von Roll may elect to operate only one train when the Facility's hazardous waste incinerator is operating and combusting waste vapors or when the air flow to the carbon adsorption system is less than the manufacturer's recommended maximum design air flow rate for a single box. Nothing in this Consent Decree shall require Von Roll to operate the carbon adsorption system if the Facility's waste incinerator is operating and all of the waste vapors from the Facility's process and storage areas are routed to the incinerator.

16. If the Facility's waste incinerator ceases operating when only one carbon adsorption train is in service because the other train(s) is (are) undergoing a carbon change-out procedure, Von Roll, as expeditiously as possible, shall reduce the flow rate to the carbon adsorption system to the point where the flow does not exceed the maximum design flow rate of the train that remains in service.

22. If, within 15 days after having completed a change-out of a primary box pursuant to the Routine Maintenance Procedure, Von Roll experiences an Inter-Box CEMS reading equal to or greater than 50 ppm THC on a 60-minute rolling average on the train that has been changed out, Von Roll shall not be required immediately to initiate and complete a new change-out of the primary box pursuant to the Routine Maintenance Procedure. Instead, as expeditiously as possible, Von Roll shall initiate and complete an investigation of the cause(s) of the elevated Inter-Box CEMS reading to determine if the carbon within the primary box actually is spent or otherwise not functional. If Von Roll determines that the carbon within the primary box is spent or otherwise not functional, Von Roll immediately shall initiate and complete a change-out of the primary box pursuant to the Routine Maintenance Procedure. If Von Roll determines that the elevated Inter-Box CEMS reading is not caused by spent or non-functional carbon, Von Roll shall implement corrective actions, if any, to eliminate the cause(s) of the elevated readings. If, within 5 days after the elevated Inter-Box CEMS reading, Von Roll cannot determine the cause of the elevated reading, Von Roll immediately shall initiate and complete a change-out of the primary box pursuant to the Routine Maintenance Procedure.

23. Nothing in this Subsection IV.C. is intended to limit Von Roll's right to replace its primary or secondary boxes on a more frequent basis than specified herein or at any time that Von Roll determines that carbon within any box is not effectively adsorbing volatile organic compounds, including benzene.

24. Von Roll shall maintain on-site a sufficient supply of fresh carbon or a spare carbon box containing fresh carbon to enable it to undertake a change-out procedure without going through the manufacturer of the carbon boxes or the replacement carbon. This requirement



27. Within 90 days after receipt of any request submitted pursuant to Paragraph 25, U.S. EPA shall in writing: (i) approve the request; (ii) approve the request upon specified conditions; (iii) approve part of the request and disapprove the remainder; or (iv) disapprove the request. If Von Roll objects to all or any part of a decision by U.S. EPA under this Paragraph, Von Roll shall invoke Section X of this Decree (Dispute Resolution) within 30 days of receipt of U.S. EPA's decision.

28. If U.S. EPA does not provide a written response to Von Roll's request within 90 days of receipt of the request, Von Roll's request shall be deemed approved by U.S. EPA and Von Roll thereafter shall petition the Court for a material modification of this Decree consistent with the request Von Roll made to U.S. EPA.

29. All material modifications to Subsections IV.A and IV.C and the Routine Maintenance Procedure must be given final approval by this Court.

30. Non-material modifications to the Facility's Routine Maintenance Procedure do not require U.S. EPA's approval nor Court approval. By no later than 30 days after making any non-material modification, Von Roll shall submit a revised copy of the Routine Maintenance Procedure to U.S. EPA with a reference to this Paragraph of the Consent Decree. Disputes regarding whether a modification to the Facility's Routine Maintenance Procedure is material or non-material shall be resolved pursuant to Section X of this Decree (Dispute Resolution).

**E. Managing Spent Carbon**

31. Von Roll shall manage spent carbon from its carbon adsorption system as hazardous waste. Nothing shall prevent Von Roll from incinerating the spent carbon in its

d. utilize the following three test points for conducting calibration error tests:

- i. Zero Level: zero to 0.1 ppm;
- ii. Mid-Level: 40 to 60 ppm;
- iii. High-Level: 140 to 160 ppm.

34. Von Roll shall calibrate, maintain and operate the Outlet CEMS in accordance with the manufacturer's recommended procedures.

**H. Recordkeeping**

35. Von Roll shall retain records of CEMS data for no less than three years. Von Roll shall make CEMS data available to U.S. EPA as soon as practicable upon request.

36. For the life of this Consent Decree, Von Roll shall create and retain written records of: (i) each date and time that breakthrough occurs; (ii) the flow rate to the primary box (as determined by either the fan(s) or blower(s) or a flow monitoring device to the primary box) at the time of each breakthrough event and continuing until the change-out procedure commences; (iii) the date, time, and duration of each change-out procedure; and (iv) the results of each investigation undertaken pursuant to the requirements of Paragraph 22.

**I. Incorporating Consent Decree Requirements into Federally-Enforceable Permits**

37. Von Roll shall not oppose, appeal, or otherwise seek review of Ohio EPA's decision to amend the Facility's existing Permit to Install ("PTI") to incorporate the requirement of an "in series" carbon adsorption system and the definition of carbon breakthrough set forth in this Consent Decree. With respect to these issues, Von Roll shall cooperate fully with Ohio EPA as Ohio EPA makes this amendment. Nothing in this Consent Decree is intended to limit or

- c. that the SEP is not a project that Von Roll was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Decree;
- d. that Von Roll has not received and will not receive credit for the SEP in any other enforcement action; and
- e. that Von Roll will not receive any reimbursement for any portion of the SEP from any other person.

41. SEP Completion Report. Within 30 days after the date on which the household hazardous waste collection is held, Von Roll shall submit a SEP Completion Report to the United States in accordance with Section XIV of this Consent Decree (Notices and Submissions).

The SEP Completion Report shall contain the following information:

- a. a detailed description of the SEP as implemented;
- b. a description of any problems encountered in completing the SEP and the solutions thereto;
- c. an itemized list of all costs;
- d. certification that the SEP has been fully implemented pursuant to the provisions of this Decree; and
- e. a description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

42. U.S. EPA may, in its sole discretion, require information in addition to that described in the preceding Paragraph, in order to determine the adequacy of SEP completion or eligibility of SEP costs, and Von Roll shall provide such information.

43. After receiving the SEP Completion Report, the United States will notify Von Roll whether or not Von Roll has satisfactorily completed the SEP. If the SEP has not been satisfactorily completed or if the amount expended on performance of the SEP is less than the

explained at the time the report is due, Von Roll shall so state in the report. Von Roll shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within 30 days of the day Von Roll becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves Von Roll of its obligation to provide the notice required by Section IX of this Consent Decree (Force Majeure).

49. Whenever any violation of this Consent Decree or any other event affecting Von Roll's performance under this Decree, or the performance of its Facility, may pose an immediate threat to the public health or welfare or the environment, Von Roll shall notify U.S. EPA orally or by electronic or facsimile transmission as soon as possible, but no later than 24 hours after Von Roll first knew of, or should have known of, the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

50. All reports shall be submitted to the persons designated in Section XIV of this Consent Decree (Notices and Submissions).

51. Each report submitted by Von Roll under this Decree shall be signed by an official of Von Roll and include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

EPA-R5ORC-AE2010-542

55. Von Roll shall pay interest on any unpaid balance of the civil penalty owed which will begin to accrue at the end of the 30 day period described above, at the rate established by the Department of the Treasury under 31 U.S.C. § 3717.

56. Upon entry, this Decree will constitute an enforceable judgment for purposes of post-judgment collection in accordance with Rule 69 of the Federal Rules of Civil Procedure, the Federal Debt Collection Procedure Act, 28 U.S.C. §§ 3001-3308, and other applicable federal authority. The United States will be deemed a judgment creditor for purposes of collection of any unpaid amounts of the civil and stipulated penalties and interest.

57. Von Roll shall not deduct the civil penalty paid under this Section in calculating its federal income tax.

#### **VIII. STIPULATED PENALTIES**

58. Von Roll shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified in this Section VIII, unless excused under Section IX (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

59. For failing to perform, on an annual basis, the verification procedure for enclosures as specified in Procedure T of Appendix B of 40 C.F.R. § 52.741: \$10,000 per missed procedure.

60. For failing to install or operate a carbon adsorption system that consists of two or more trains of a primary and a secondary carbon box operated in series: \$15,000 per day.

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67. For failing to comply with either the 12 hour or the 48 hour time limitations set forth in the Routine Maintenance Procedure (Appendix A) at Paragraphs 5.1.1 and 5.1.2, respectively:

| <u>Period of Non-Compliance</u> | <u>Penalty per Day per Violation</u> |
|---------------------------------|--------------------------------------|
| 1 Day                           | \$ 500                               |
| 2 Days                          | \$1,500                              |
| 3 or More Days                  | \$2,500                              |

68. For failing to comply with any of the requirements of Paragraph 22:

| <u>Period of Non-Compliance</u> | <u>Penalty per Day per Violation</u> |
|---------------------------------|--------------------------------------|
| 1 to 30 Days                    | \$ 500                               |
| 31 to 60 Days                   | \$1,000                              |
| Over 60 Days                    | \$2,000                              |

69. For failing to comply with the requirement of Paragraph 24:

| <u>Period of Non-Compliance</u> | <u>Penalty per Day</u> |
|---------------------------------|------------------------|
| 1 to 5 Days                     | \$ 500                 |
| 5 to 10 Days                    | \$1,000                |
| Over 10 Days                    | \$2,000                |

70. For failing to manage spent carbon as hazardous waste pursuant to the requirements of Paragraph 31: \$ 5,000 per violation.

71. For failing to operate or maintain each Inter-Box CEMS or the Outlet CEMS, except for periods of malfunction or scheduled maintenance:

| <u>Period of Non-Compliance</u> | <u>Penalty per Day per CEMS</u> |
|---------------------------------|---------------------------------|
| 1 to 5 Days                     | \$ 500                          |
| 5 to 10 Days                    | \$1,000                         |
| Over 10 Days                    | \$2,000                         |

77. If the SEP is completed satisfactorily, but Von Roll spent less than 90 percent of the amount of money required to be spent, Von Roll shall pay a stipulated penalty in the amount of 90% of the amount by which the SEP fell short of \$34,000.

78. If the SEP is completed satisfactorily, but Von Roll spent at least 90 percent of the amount required to be spent, Von Roll shall not pay any stipulated penalty.

79. For failing to comply with the reporting requirements of Paragraphs 14, 41, 47, 48, or 49:

| <u>Period of Non-Compliance</u> | <u>Penalty per Day per Violation</u> |
|---------------------------------|--------------------------------------|
| 1 to 30 Days                    | \$ 200                               |
| 31 to 60 Days                   | \$ 500                               |
| Over 60 Days                    | \$1,000                              |

80. For failing to timely pay the civil penalty required under Section VII of this Decree when due, \$ 10,000 per day.

81. Stipulated penalties under this Section shall begin to accrue on the day after performance is due or on the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree. Von Roll shall pay any stipulated penalty within 30 days of receiving the United States' written demand.

82. The United States may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

83. Stipulated penalties shall continue to accrue as provided in Paragraph 81, during any Dispute Resolution, but need not be paid until the following:

Decree is also a violation of the CAA or RCRA, Defendant shall be allowed a credit for any stipulated penalties paid against any statutory penalties imposed for such violation.

#### **IX. FORCE MAJEURE**

88. A "force majeure event" is any event beyond the control of Von Roll, its contractors, or any entity controlled by Von Roll that delays the performance of any obligation under this Consent Decree despite Von Roll's best efforts to fulfill the obligation. "Best efforts" includes anticipating any potential force majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include Von Roll's financial inability to perform any obligation under this Consent Decree.

89. Von Roll shall provide notice orally or by electronic or facsimile transmission as soon as possible, but not later than 72 hours after the time Von Roll first knew of, or by the exercise of due diligence, should have known of, a claimed force majeure event. Von Roll shall also provide written notice, as provided in Section XIV of this Consent Decree (Notices and Submissions), within 7 days of the time Von Roll first knew of, or by the exercise of due diligence, should have known of, the event. The notice shall state the anticipated duration of any delay; its cause(s); Von Roll's past and proposed actions to prevent or minimize any delay; a schedule for carrying out those actions; and Von Roll's rationale for attributing any delay to a force majeure event. Failure to provide oral and written notice as required by this Paragraph shall preclude Von Roll from asserting any claim of force majeure.

90. If the United States agrees that a force majeure event has occurred, the United States may agree to extend the time for Von Roll to perform the affected requirements for the



days after the conclusion of the informal negotiation period, Von Roll invokes formal dispute resolution procedures as set forth below.

94. Formal Dispute Resolution. Von Roll shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but may not necessarily be limited to, any factual data, analysis, or opinion supporting Von Roll's position and any supporting documentation relied upon by Von Roll.

95. The United States shall serve its Statement of Position within 45 days of receipt of Von Roll's Statement of Position. The United States' Statement of Position shall include, but may not necessarily be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Von Roll unless Von Roll files a motion for judicial review of the dispute in accordance with the following Paragraph.

96. Von Roll may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIV of this Consent Decree (Notices and Submissions), a motion requesting judicial resolution of the dispute. The motion must be filed within 30 days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Von Roll's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

- d. obtain documentary evidence, including photographs and similar data; and
- e. assess Von Roll's compliance with this Consent Decree.

101. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal laws, regulations, or permits, nor does it limit or affect any duty or obligation of Von Roll to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

## **XII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS**

102. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint in this action through the Date of Lodging of this Consent Decree with the District Court. This Consent Decree also resolves the administrative claims of the United States Environmental Protection Agency alleged in the case of In re: Von Roll America, Inc., Docket No. RCRA-05-2005-0009 (U.S. EPA Region 5). A copy of the administrative complaint is attached hereto as Appendix B.

103. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the CAA or RCRA or their implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph 102. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public

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### **XIII. COSTS**

109. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Von Roll.

### **XIV. NOTICES AND SUBMISSIONS**

110. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

To the United States:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Box 7611 Ben Franklin Station  
Washington, D.C. 20044-7611  
Re: DOJ No. 90-5-2-1-08743

To U.S. EPA:

John Matson  
Associate Regional Counsel  
U.S. Environmental Protection Agency – Region 5  
77 West Jackson Blvd.  
Mail Code C-14J  
Chicago, IL 60604-3590

and

**XV. EFFECTIVE DATE**

113. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court.

**XVI. RETENTION OF JURISDICTION**

114. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, or effectuating or enforcing compliance with the terms of this Decree.

**XVII. MODIFICATION**

115. This Consent Decree contains the entire agreement of the Parties and shall not be modified by any prior oral or written agreement, representation or understanding. Except as specified in Paragraph 30, the terms of this Consent Decree, including the attached Appendix, may be modified only by a subsequent written agreement signed by all of the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court. Disputes concerning modification of this Decree may be resolved under Section X of this Decree (Dispute Resolution), provided, however, in any motion for judicial review, the applicable standard of review for proposed modifications shall be Fed.R.Civ.P. 60(b).

**XVIII. TERMINATION**

116. After Von Roll has maintained continuous satisfactory compliance with this Consent Decree for a period of three years after the Effective Date of this Consent Decree, has complied with all other requirements of this Consent Decree, including those relating to the SEP required by Section V of this Consent Decree, and has paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, Von Roll may serve upon the United

Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

121. This Consent Decree may be signed in counterparts and its validity shall not be challenged on that basis.

122. Von Roll agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

#### **XXI. INTEGRATION**

123. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. No other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

#### **XXII. FINAL JUDGMENT**

124. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Von Roll.

SO ORDERED this 2nd day of February, 2007.

s/Peter C. Economus - 2/2/07

UNITED STATES DISTRICT JUDGE

The undersigned party consents to the Consent Decree in the matter of United States v. Von Roll America, Inc. (N.D. Ohio).

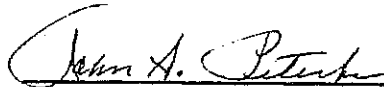
FOR THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY:

A handwritten signature in cursive script, reading "Granta G. Nakayama", is written over a horizontal line.

GRANTA G. NAKAYAMA  
Assistant Administrator  
Office of Enforcement and Compliance Assurance  
United States Environmental Protection Agency  
Ariel Rios Building  
Washington, D.C.

The undersigned party consents to the Consent Decree in the matter of United States v. Von Roll America, Inc. (N.D. Ohio).

FOR DEFENDANT VON ROLL AMERICA, INC.:

A handwritten signature in cursive script, appearing to read "John A. Peterka", is written over a horizontal line.

JOHN A. PETERKA

President

Von Roll America, Inc.

1250 St. George St.

East Liverpool, OH 43920

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

|                           |   |                          |
|---------------------------|---|--------------------------|
| UNITED STATES OF AMERICA, | ) |                          |
|                           | ) |                          |
| Plaintiff,                | ) | Case No. 4:06 CV 2893    |
|                           | ) |                          |
| v.                        | ) | Judge Economus           |
|                           | ) |                          |
| VON ROLL AMERICA, INC.,   | ) | Magistrate Judge Limbert |
|                           | ) |                          |
| Defendant.                | ) |                          |
| _____                     | ) |                          |

**ORDER TERMINATING CONSENT DECREE**

This Court, having duly considered the Joint Motion of the United States and Heritage-WTI, Inc. (f/k/a Von Roll America, Inc.) to Terminate the Consent Decree, finds good cause for the Motion, and hereby ORDERS and ADJUDGES as follows:

1. The Motion is GRANTED;
2. The Consent Decree in this matter is TERMINATED.

5/6/10

\_\_\_\_\_  
Date

s/Peter C. Economus

\_\_\_\_\_  
United States District Judge





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

DEC 14 2011

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

REPLY TO THE ATTENTION OF:

John A. Peterka  
President  
Heritage-WTI, Inc.  
1250 St. George Street  
East Liverpool, Ohio 43920-3400

Re: *In the Matter of: Heritage-WTI, Inc.*  
Docket No. CAA-05-2011-0012

Dear Mr. Peterka:

I am writing pursuant to paragraph 25 of the Consent Agreement and Final Order (CAFO) in the above referenced matter, to provide notification to Heritage/WTI, Inc. (WTI) by the U.S. Environmental Protection Agency concerning whether WTI has satisfactorily fulfilled its supplemental environmental project (SEP) obligations under the CAFO.

Paragraph 17 of the CAFO required WTI to conduct a household hazardous waste collection SEP. Paragraph 22 of the CAFO required WTI to submit a SEP completion report. WTI conducted the SEP on September 10, 2011, and submitted a SEP completion report on October 6, 2011.

U.S. EPA has reviewed WTI's completion report and concludes that WTI has satisfactorily completed the SEP required by the CAFO.

If you have any question regarding this letter, please contact Charles Hall, of my staff, at (312) 353-3443.

Sincerely,

George Czerniak  
Chief

Air Enforcement and Compliance Assurance Branch

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

JUL 01 2011

REPLY TO THE ATTENTION OF:

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

John A. Peterka  
President  
Heritage-WTI, Inc.  
1250 St. George Street  
East Liverpool, Ohio 43920-3400

Re: *In the Matter of: Heritage-WTI, Inc.*  
Docket No. CAA-05-2011-0012

Dear Mr. Murray:

I have enclosed a file stamped Consent Agreement and Final Order ("CAFO") which resolves case docket number, CAA-05-2011-0012, with Heritage-WTI, Inc. (WTI). As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on July 1, 2011. Pursuant to paragraph 11 of the CAFO, WTI must pay the civil penalty within 30 days of the date the CAFO is filed. Your check must display the case docket number, CAA-05-2011-0012, and the billing document number 2751103A039.

If you have any questions on this matter, please do not hesitate to call Mr. Charles Hall, of my staff, at (312) 353-3443, or, with legal questions, John Matson, Associate Regional Counsel, at (312) 886-2243.

Sincerely,

William MacDowell  
Minnesota/Ohio Air Enforcement and Compliance Assurance Section

Enclosure

EPA-R5ORC-AE2010-567

cc: Regional Hearing Clerk,/E-19J  
Michael Scanlon, Barnes & Thornburg  
John Matson/C-14J  
Ed Fasko, Ohio EPA

EPA-R5ORC-AE2010-568

Standard bcc's:        Official file copy w/Attachment(s)  
                              Originating Organization Reading File w/Attachment(s)

other bcc's:            J. Matson, C-14J

|                |   |
|----------------|---|
| Creation Date: | June 28, 2011   |
| Filename:      | C:\EPAWORK\WasteCombustion\HazWaste\Sources\WTI\2009CPT\CAFOfy2011q3.docx |
| Legend:        | ARD:AECAB:AECAS(MN/OH):c.hall   |

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF: ) Docket No. CAA-05-2011-0012  
)  
Heritage-WTI, Inc. ) Proceeding to Assess a Civil Penalty  
East Liverpool, Ohio ) under Section 113(d) of the Clean Air  
) Act, 42 U.S.C. § 7413(d)  
Respondent. )  
\_\_\_\_\_ )

SIGN  
HERE

RECEIVED  
JUL 01 2011  
REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

**CONSENT AGREEMENT AND FINAL ORDER**

1. Complainant, the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5, brought this administrative action seeking a civil penalty under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d).
2. On December 22, 2010, EPA filed the Complaint in this action against Respondent, Heritage-WTI, Inc. (WTI). The Complaint alleged that Respondent violated Section 112(f)(4) of the Act, 42 U.S.C. § 7412(f)(4), and the dioxin/furan and mercury emission limits in the National Emission Standard for Hazardous Air Pollutants from Hazardous Waste Combustors (HWC MACT) set forth at 40 C.F.R. § 63.1219(a)(1)(i)(A), and 40 C.F.R. § 63.1219(a)(2), at its facility in East Liverpool, OH.
3. Respondent filed an Answer and requested a hearing under Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2).
4. On June 28, 2011, EPA filed its First Amended Complaint re-alleging WTI's original violations, but modifying the time period for WTI's violation of the HWC MACT dioxin/furan and mercury emission limits.

5. Complainant and Respondent wish to settle Respondent's liability for federal civil penalties for the violations and facts alleged in the First Amended Complaint, and have consented to the entry of this Consent Agreement, and the accompanying Final Order (CAFO).

#### Stipulations

6. Respondent admits the jurisdictional allegations in the First Amended Complaint and neither admits nor denies the factual allegations in the First Amended Complaint.

7. Respondent waives any right to contest the allegations in the First Amended Complaint and its right to appeal the Final Order accompanying the Consent Agreement.

8. Respondent certifies that it is complying fully with the National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors, 40 C.F.R. Part 63, Subpart EEE, 40 C.F.R. §§ 63.1200 through 63.1221.

9. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms and conditions of this CAFO.

10. The parties agree that settling this action without further litigation, upon the terms in this CAFO, is in the public interest.

### Civil Penalty

11. In consideration of Respondent's self-reporting of the violations, its cooperation in establishing interim operating parameter limits until it could demonstrate compliance, the size of Respondent's business, and Respondent's agreement to perform a supplemental environment project, Complainant agrees to mitigate the proposed penalty of \$151,800 to \$50,100.

12. Within 30 days after the effective date of this CAFO, Respondent must pay the \$50,100 civil penalty by electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York  
ABA No. 021030004  
Account No. 68010727  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read:  
"D68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state *In re Heritage-WTI, Inc.*, the docket number of this CAFO, CAA-05-2011-0012, and the billing document number.

13. Respondent must send a notice of payment that states *In re Heritage-WTI, Inc.*, the docket number of this CAFO, CAA-05-2011-0012, and the billing document number, to the Compliance Tracker, Air Enforcement and Compliance Assurance Branch and to John Matson, at the following addresses when it pays the civil penalty:

Attn: Compliance Tracker (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. EPA, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

John Matson (C-14J)  
Associate Regional Counsel  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

14. This civil penalty is not deductible for federal tax purposes.
15. If Respondent does not pay timely the civil penalty, or any stipulated penalties due under paragraph 27, below, EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.
16. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent

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of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

**Supplemental Environmental Project**

17. Respondent shall implement a Supplemental Environmental Project ("SEP") in the fall of 2011. Respondent shall sponsor one collection of household hazardous waste at a satellite location no farther than 25 miles from its hazardous waste incineration facility in East Liverpool, Ohio ("Fall 2011 SEP"). The Fall 2011 SEP shall be in addition to the collection effort that Respondent routinely sponsors in the spring of each year. Respondent shall collect, process, recycle, and/or dispose of the household hazardous wastes consistent with all applicable legal requirements. The cost of this project which WTI shall pay shall be no less than \$53,000.

18. Respondent must complete the Fall 2011 SEP as described in Exhibit A of this CAFO. Respondent must not cause the unpermitted or unauthorized release to the environment of any mercury, or any other toxic or hazardous chemical during the performance of the SEP. The Fall 2011 SEP will reduce the amount of mercury, plastic (which contain precursors for dioxin/furan emissions), and other household hazardous waste, being landfilled by households in the vicinity of the East Liverpool, Ohio facility.

19. Respondent certifies that it is not required to perform or develop the Fall 2011 SEP by any law, regulation, grant, order, or agreement or as injunctive relief as of the date it signs this CAFO. Respondent further certifies that it has not received, and is not negotiating to receive, credit for the Fall

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2011 SEP in any other enforcement action. Finally, Respondent certifies that it is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the Fall 2011 SEP. Respondent further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the Fall 2011 SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired.

20. Respondent is responsible for the satisfactory completion of the Fall 2011 SEP in accordance with the requirements of this CAFO.

21. EPA may inspect the East Liverpool, Ohio facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

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22. Respondent must submit a SEP completion report to EPA no later than 30 days after the date the Fall 2011 SEP occurs. This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any operating problems and the actions taken to correct the problems;
- c. Itemized cost of goods and services used to complete the SEP, documented by copies of invoices, purchase orders or canceled checks that specifically identify and itemize the individual cost of the goods and services;
- d. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

23. Respondent must submit all notices and reports required by this CAFO by first class mail to the Compliance Tracker in the Air Enforcement and Compliance Assurance Branch at the address provided in paragraph 13, above.

24. In any report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

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25. Following receipt of the SEP completion report described in paragraph 22, above, EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the Fall 2011 SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the Fall 2011 SEP or the SEP report and EPA will seek stipulated penalties under paragraph 27.

26. If EPA exercises option b, above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any requirement that EPA imposes in its decision. If Respondent does not complete the Fall 2011 SEP as required by EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 27, below.

27. If Respondent violates any requirement of this CAFO relating to the Fall 2011 SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. Except as provided in subparagraph b, below, if Respondent did not complete the Fall 2011 SEP satisfactorily according to the requirements of this CAFO, Respondent must pay a stipulated penalty of \$30,000;
- b. If Respondent did not complete the Fall 2011 SEP satisfactorily, but EPA determines that Respondent made good faith and timely efforts to complete the Fall 2011 SEP and certified, with supporting documents, that it spent at least 90 percent of the amount set forth in paragraph 17, Respondent will not be liable for any stipulated penalty under subparagraph a, above;

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- c. If Respondent completed the Fall 2011 SEP satisfactorily, but spent less than 90 percent of the amount set forth in paragraph 17, Respondent must pay a penalty in the amount of 90% of the amount by which the Fall 2011 SEP fell short of \$53,000;
- d. If Respondent did not submit timely the SEP completion report required by paragraph 22, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

| <u>Penalty per violation per day</u> | <u>Period of violation</u> |
|--------------------------------------|----------------------------|
| \$ 200                               | 1st through 14th day       |
| \$ 500                               | 15th through 30th day      |
| \$1,000                              | 31st day and beyond        |

28. EPA's determinations of whether Respondent satisfactorily completed the Fall 2011 SEP and whether Respondent made good faith and timely efforts to complete the Fall 2011 SEP will bind Respondent.

29. Respondent must pay any stipulated penalties within 15 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraph 12, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

30. Any public statement that Respondent makes referring to the Fall 2011 SEP must include the following language, "WTI undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against WTI for violations of National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors, 40 C.F.R. Part 63, Subpart EEE."

31. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any cost or expenditures incurred in performing the Fall 2011 SEP.

#### General Provisions

32. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the First Amended Complaint.

33. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

34. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state, and local laws. Except as provided in paragraph 32, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

35. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Source Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

36. The terms of this CAFO bind Respondent, its successors, and assigns.

37. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

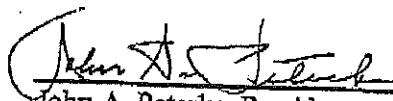
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38. Each party agrees to bear its own costs and attorney's fees in this action.

39. This CAFO constitutes that entire agreement between the parties.

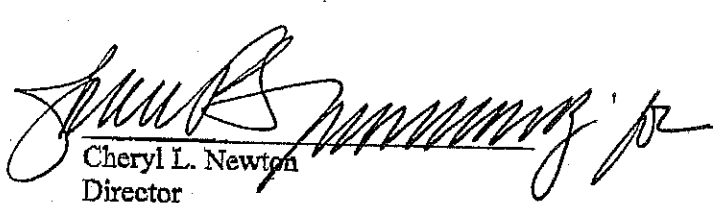
**Heritage-WTI, Inc., Respondent**

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
John A. Peterka, President  
Heritage-WTI, Inc.

**United States Environmental Protection Agency, Complainant**

6/29/11  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Cheryl L. Newton  
Director  
Air and Radiation Division  
U.S. Environmental Protection Agency  
Region 5

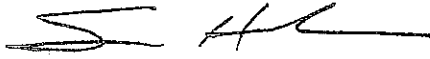
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**Consent Agreement and Final Order**  
**In the Matter of: Heritage-WTI, Inc.**  
**Docket No. CAA-05-2011-0012**

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

6-30-11  
Date

  
\_\_\_\_\_  
Susan Hedman  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 5

RECEIVED  
JUL 01 2011

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

EPA-R5ORC-AE2010-581



Consent Agreement and Final Order  
In the Matter of: Heritage-WTI, Inc.  
Docket No. CAA-05-2011-0012

Certificate of Service

I certify that I filed the original and one copy of the Consent Agreement and Final Order (CAFO), docket number CAA-05-2011-0012 with the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604, and that I mailed a second original copy by first-class, postage prepaid, certified mail, return receipt requested, by placing it in the custody of the United States Postal Service addressed as follows:

John Peterka  
President  
Heritage-WTI, Inc.  
1250 St. George Street  
East Liverpool, Ohio 43920-3400

Michael Scanlon, Esq.  
Barnes & Thornburg LLP  
11 South Meridian Street  
Indianapolis, Indiana 46204-3535

RECEIVED  
JUL 01 2011

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

I certify that I mailed copies of the CAFO by first-class mail, addressed as follows:

Robert Hodanbosi, Chief  
Division of Air Pollution Control  
Ohio Environmental Protection Agency  
50 West Town Street, Suite 700  
Columbus, Ohio 43215

Ed Fasko, Air Pollution Control Supervisor  
Northeast District Office  
Ohio Environmental Protection Agency  
2110 East Aurora Road  
Twinsburg, Ohio 44087

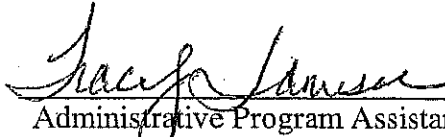
Honorable Susan L. Biro  
Chief Administrative Law Judge  
U.S. Environmental Protection Agency  
Ariel Rios Building/Mail Code 1900L  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20460

EPA-R5ORC-AE2010-582

I also certify that I delivered a copy of the CAFO by intra-office mail, addressed as follows:

Marcy Toney  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard/Mail Code C-14J  
Chicago, Illinois 60604

on the 1 day of July 2011

  
Administrative Program Assistant

Certified Mail Receipt Number: 7009 1680 0000 7670 4564

RECEIVED  
JUL 01 2011

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

Standard bcc's:        Official file copy w/Attachment(s)  
                              Originating Organization Reading File w/Attachment(s)

other bcc's:            J. Matson, C-14J

|                |  |
|----------------|--|
| Creation Date: | June 28, 2011  |
| Filename:      | C:\EPA\WORK\WasteCombustion\HazWaste\Sources\WTI\2009CPT\CAFOfy2011q3.docx |
| Legend:        | ARD:AECAB:AECAS(MN/OH):c.hall  |

EPA-R5ORC-AE2010-584

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of:

Heritage-WTI, Inc.  
East Liverpool, Ohio,

Respondent.

Docket No. CAA-05-2011-0012

**COMPLAINANT'S MOTION FOR LEAVE TO FILE AMENDED COMPLAINT**

Complainant, the United States Environmental Protection Agency, Region 5, pursuant to 40 C.F.R. § 22.14(c) hereby moves this Honorable Court for leave to file an Amended Complaint in the above-captioned matter. A draft redline/strikeout Amended Complaint is attached to this motion as Appendix A.

In support of its motion, Complainant states as follows:

1. On December 22, 2010, Plaintiff filed a complaint against Respondent, Heritage-WTI, Inc. (WTI) for violations at its hazardous waste incinerator in East Liverpool, Ohio, (Incinerator) of the Clean Air Act and the National Emission Standard for Hazardous Air Pollutants from Hazardous Waste Combustors (HWC MACT).

2. The Complaint filed by Region 5 alleged WTI violated the dioxin/furan and mercury emission limits in the HWC MACT, and that the violations ended on September 15, 2010, when WTI demonstrated MACT compliance during its September 15 and 16, 2010 performance test.

3. On January 26, 2011, WTI filed its Answer, and in paragraphs 73 and 77, denied that the Incinerator exceeded the dioxin/furan and mercury emission limits in the HWC MACT once it began operating under the interim operating parameter limits proposed by WTI, and verbally approved by EPA and Ohio EPA, on June 14, 2010 (Interim OPLs).

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4. On February 10, 2011, Chief Judge Biro initiated the alternative dispute process (ADR) process to facilitate the possible settlement of EPA's allegations against WTI, with the Honorable Judge Nissen designated as neutral. The ADR process was automatically scheduled to terminate on April 11, 2011, but was subsequently extended to May 26, 2011.

5. The parties held a settlement conference in Chicago on March 15, 2011, during which they reached a tentative agreement in principle under which WTI would pay a cash penalty and perform a Supplemental Environmental Project.

6. During the March 15, 2011 Conference, WTI repeated its argument that the violations period ended on June 14, 2010, and produced evidence that as of June 14, 2010, the Incinerator combustion gases were in compliance with the dioxin/furan and mercury emission limits in the HWC MACT by modifying its operations to conform with the Interim OPLs.

7. EPA believes that the evidence presented by WTI regarding compliance with the Interim OPLs is credible. Accordingly, EPA believes that the WTI's violations of the dioxin/furan and mercury emission limits in the HWC MACT ended on June 14, 2010.

8. The shorter violations period does not affect the penalty amount sought by Region 5.

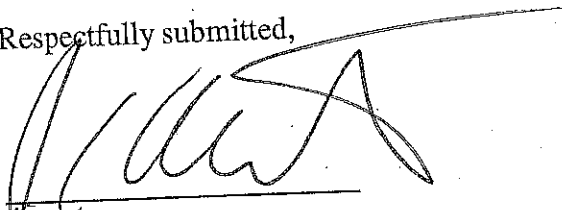
9. To ensure that the allegations regarding WTI's violations of the dioxin/furan and mercury emission limits in the HWC MACT are accurate, Complainant therefore seeks leave to file an Amended Complaint reflecting that the violations period for WTI's violations of the dioxin/furan and mercury emission limits in the HWC MACT ended on June 14, 2010, when it began operating in compliance with the Interim OPLs.

10. Complainant has also made minor and clerical changes in the Amended Complaint, as set forth in Appendix A.

For the afore-mentioned reasons, Complainant respectfully requests that this Honorable Court grant its Motion for Leave to File an Amended Complaint in this action.

Dated: 6/30/11

Respectfully submitted,



John C. Matson  
Attorney for Complainant  
U.S. EPA Region 5

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

**IN THE MATTER OF:**

Heritage-WTI, Inc.  
East Liverpool, Ohio,

Respondent.

) Docket No. CAA-05-2011-0012  
)  
) Amended Complaint to Assess a Civil Penalty  
) under Section 113(d) of the Clean Air Act, 42  
) U.S.C. § 7413(d)  
)

**Amended Complaint**

1. This is an administrative proceeding to assess a civil penalty under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d).
2. The Complainant is, by lawful delegation, the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5, Chicago, Illinois.
3. The Respondent is Heritage-WTI, Inc. (WTI), a corporation doing business in Ohio.

**Statutory and Regulatory Background**

4. Section 112 of the CAA, 42 U.S.C. § 7412, authorizes the Administrator of EPA (the Administrator, or EPA) to regulate "hazardous air pollutants" that may have an adverse effect on health or the environment.
5. Section 112(f)(4) of the CAA, 42 U.S.C. § 7412(f)(4), prohibits the emission of any air pollutant to which a standard under Section 112 applies from any stationary source in violation of such standard without first obtaining a waiver from EPA.
6. Pursuant to Section 112 of the CAA, 42 U.S.C. § 7412, EPA promulgated the National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors, 40 C.F.R. 63, Subpart EEE, 40 C.F.R. §§ 63.1200 through 63.1221 (HWC MACT), which set forth the standards applicable to the operation of hazardous waste incinerators, among other sources.
7. Under Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3), the Administrator may issue an order requiring compliance to any person who has violated or is violating the HWC MACT. The Administrator has delegated this authority to the Director of the Air and Radiation Division.
8. Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19, authorize EPA to assess a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000 for violations that occurred after January 12, 2009.

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### General Allegations

- | 9. WTI was and is a "person" within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602.
10. WTI was and is an "owner" and an "operator" as those terms are defined in Section 112 of the CAA, 42 U.S.C. § 7412, and 40 C.F.R. § 63.2, of a "hazardous waste incinerator," as that term is defined in 40 C.F.R. §§ 260.10 and 63.1201, located at 1250 St. George Street, East Liverpool, Ohio (Incinerator).
- | 11. At all times relevant to this amended complaint, WTI was subject to the HWC MACT, 40 C.F.R. 63, Subpart EEE, 40 C.F.R. §§ 63.1200 through 63.1221, because it burned hazardous waste in the Incinerator it owns and operates.
- | 12. At all times relevant to this amended complaint, WTI's Incinerator was an "area source" within the meaning of Section 112(a)(1) of the CAA, 42 U.S.C. § 7412(a)(1), and 40 C.F.R. § 63.2.
- | 13. At all times relevant to this amended complaint, WTI's Incinerator was an "existing source" within the meaning of the HWC MACT at 40 C.F.R. §§ 63.1201(a) and 63.1206(a)(1)(ii)(B), because it was constructed prior to April 19, 1996.
14. 40 C.F.R. § 63.1207(d) requires an existing source incinerating hazardous waste to conduct periodic and timely comprehensive performance tests (CPT) to, among other things, demonstrate compliance with the emission standards provided by 40 C.F.R. §§ 63.1219 through 63.1221.
- | 15. The compliance date for the HWC MACT for existing hazardous waste incinerators was on or before October 14, 2008, unless EPA granteds an extension under 40 C.F.R. §§ 63.6(i) or through 63.1213.
16. Neither EPA nor the Ohio Environmental Protection Agency (Ohio EPA) granted WTI an extension of time under 40 C.F.R. §§ 63.6(i) or through 63.1213 to comply with the emission standards of the HWC MACT.
17. Pursuant to Section 112(l) of the CAA, 42 U.S.C. § 7412(l), Ohio EPA developed and submitted to the Administrator for approval a program for the implementation and enforcement of emission standards and other requirements for air pollutants subject to Section 112 of the CAA, 42 U.S.C. § 7412.
18. On July 11, 2001, EPA delegated to Ohio EPA the authority to implement the HWC MACT in Ohio through its Title V Permit Program. *See* 66 Fed. Reg. 36173 (2001).
19. Ohio EPA's HWC MACT authority under its Title V Permit Program includes, among other things, the authority to approve a CPT, with EPA retaining the right to comment on the proposed CPT.



20. On December 22, 2008, Ohio EPA issued to WTI a Title V permit.
21. On October 5, 2007, WTI's testing contractor, ENSR/AECOM, submitted a CPT plan and continuous monitoring system (CMS) performance evaluation test (PET) plan for the Incinerator to EPA and Ohio EPA on behalf of WTI.
22. Between April 2, 2008 and February 23, 2010, EPA and Ohio EPA provided comments to WTI on the CPT and CMS PET plans, and WTI submitted revisions to EPA and Ohio EPA addressing their comments.
23. On March 16, 2010, Ohio EPA approved the CPT and CMS PET plans as revised on February 4 and 23, 2010.
24. On March 30 and 31, April 1 and 2, and May 11 and 12, 2010, WTI conducted the CPT (Spring CPT) for the Incinerator, as required by 40 C.F.R. § 63.1207.
25. On June 14, 2010, WTI received the preliminary CPT results from ENSR/AECOM, its testing contractor, and forwarded them to EPA and Ohio EPA.
26. On June 14, 2010, WTI ceased burning hazardous waste in its hazardous waste incinerator (Incinerator), and requested interim operating parameter limits (OPL) from EPA and Ohio EPA to demonstrate and maintain compliance with the dioxin/furan and mercury emission standards of the HWC MACT.
- 25-27. On June 14, 2010, EPA and Ohio EPA verbally approved WTI's interim OPL request, and WTI modified its operating procedures to burn hazardous waste in the Incinerator in compliance with the interim OPLs and the dioxin/furan and mercury emission standards of the HWC MACT.
- 26-28. On June 18, 2010, EPA issued to WTI a Finding of Violation for violations of HWC MACT emission standards during the CPT.
- 27-29. On June 23, 2010, Ohio EPA issued to WTI a Notice of Violation for violations of HWC MACT emission standards during the CPT.
30. On June 30, 2010, EPA and WTI representatives met to discuss the violations and WTI's June 14, 2010, request for interim operating parameter limits OPLs. Ohio EPA representatives joined the conference by telephone.
31. On July 2, 2010, WTI revised its interim OPL request.
32. On July 15, 2010, EPA issued final written approval of WTI's interim OPL request, and WTI further modified its operating procedures to ensure compliance with the interim OPLs.

28.

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33. On September 15 and 16, 2010, WTI conducted a re-test CPT (September CPT) to demonstrate compliance with the dioxin/furan and mercury emission standards in the HWC MACT.

34. WTI conducted a dioxin/furan performance test as part of the September CPT, using EPA Publication SW-846 Method 0023A.

35. The average dioxin/furan emission concentration during the September CPT was 0.0086 ng TEQ/dscm @ 7% O<sub>2</sub>.

36. On September 15, 2010, WTI conducted a metals performance test as part of the September CPT, using Reference Method 29 in 40 C.F.R. 60, Appendix A.

37. The average mercury emission concentration during the September CPT was 7.04 ug/dscm @ 7% O<sub>2</sub>.

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#### Count I

30.38. Complainant incorporates paragraphs 1 through 37~~29~~ of this amended complaint, as if set forth fully in this paragraph.

31.39. Pursuant to 40 C.F.R. § 63.1219(a)(1)(i)(A), the owner or operator of an existing hazardous waste incinerator equipped with a waste heat boiler must not discharge or cause combustion gases to be emitted into the atmosphere that contain dioxins and furans in excess of 0.20 nanogram toxic equivalent per dry standard cubic meter, corrected to 7 percent oxygen (ng TEQ/dscm @ 7% O<sub>2</sub>).

32.40. At all times relevant to this amended complaint, WTI's Incinerator was equipped with a waste heat boiler.

41. On May 11 and 12, 2010, WTI conducted a dioxin/furan performance test as part of the Spring CPT, using EPA Publication SW-846 Method 0023A.

33.42. The average dioxin/furan emission concentration during the dioxin/furan performance test was 0.518 ng TEQ/dscm @ 7% O<sub>2</sub>.

34. On September 15 and 16, 2010, WTI conducted a dioxin/furan performance test as part of the September CPT, using EPA Publication SW-846 Method 0023A. The average dioxin/furan emission concentration during the September CPT was 0.0086 ng TEQ/dscm @ 7% O<sub>2</sub>.

35.43. For the period from May 11, 2010 until September 15~~June 14~~, 2010, WTI violated 40 C.F.R. § 63.1219~~03~~(a)(1)(i)(A) and Section 112(f)(4) of the CAA, 42 U.S.C.

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§ 7412(f)(4), by discharging into the atmosphere combustion gases containing dioxin/furan in excess of the standards set forth at 40 C.F.R. § 63.1219(a)(1)(i)(A).

### Count II

- 36.44. Complainant incorporates paragraphs 1 through 37.29 of this amended complaint, as if set forth in this paragraph.
- 37.45. Pursuant to 40 C.F.R. § 63.1219(a)(2), the owner or operator of an existing hazardous waste incinerator must not discharge or cause combustion gases to be emitted into the atmosphere that contain mercury in excess of 130 micrograms per dry standard cubic meter, corrected to 7 percent oxygen ( $\mu\text{g}/\text{dscm}$  @ 7%  $\text{O}_2$ ).
- 38.46. On May 11, 2010, WTI conducted a metals performance test as part of the Spring CPT, using Reference Method 29 in 40 C.F.R. 60, Appendix A.
39. The average mercury emission concentration during the Spring CPT was  $290.7 \mu\text{g}/\text{dscm}$  @ 7%  $\text{O}_2$ .
47. ~~On September 15, 2010, WTI conducted a metals performance test as part of the September CPT, using Reference Method 29 in 40 C.F.R. 60, Appendix A.~~
- 41.1. ~~The average mercury emission concentration during the September CPT was  $7.04 \mu\text{g}/\text{dscm}$  @ 7%  $\text{O}_2$ .~~
- 42.48. For the period from May 11, 2010 through September 15, 2010, WTI violated 40 C.F.R. § 63.1219(a)(2) and Section 112(f)(4) of the CAA, 42 U.S.C. § 7412(f)(4), by discharging into the atmosphere combustion gases containing mercury in excess of the standards set forth at 40 C.F.R. § 63.1219(a)(2).

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### Proposed Civil Penalty

- 43.49. The Administrator must consider the factors specified in Section 113(e) of the CAA when assessing an administrative penalty under Section 113(d). 42 U.S.C. § 7413(e).
- 44.50. Complainant evaluated the facts and circumstances of this case with specific reference to EPA's Clean Air Act Stationary Source Penalty Policy dated October 25, 1991 (Penalty Policy). Enclosed with this amended complaint is a copy of the penalty policy.
- 45.51. Based upon an evaluation of the facts alleged in this amended complaint and the factors in Section 113(e) of the CAA, Complainant proposes that the Administrator assess a \$151,800 civil penalty against Respondent.

- | ~~46.52.~~ Complainant developed the proposed penalty based on the best information available to Complainant at this time. Complainant may adjust the proposed penalty if the Respondent establishes a bona fide issue of its ability to pay, or other defenses relevant to the appropriateness of the penalty.

#### **Rules Governing This Proceeding**

- | ~~47.53.~~ *The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (the Consolidated Rules) at 40 C.F.R. Part 22 (2010) govern this proceeding to assess a civil penalty. A copy of the Consolidated Rules is enclosed with the amended complaint served on Respondent.

#### **Filing and Service of Documents**

- | ~~48.54.~~ Respondent must file with the Regional Hearing Clerk the original and one copy of each document Respondent intends to include as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (E-19J)  
EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3511

- | ~~49.55.~~ Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Associate Regional Counsel John Matson to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Mr. Matson at (312) 886-2243. Mr. Matson's address is:

John Matson, Associate Regional Counsel  
Office of Regional Counsel  
EPA, Region 5  
77 West Jackson Boulevard, (C-14J)  
Chicago, Illinois 60604-3511

#### **Penalty Payment**

- | ~~50.56.~~ Respondent may resolve this proceeding at any time by paying the proposed penalty by certified or cashier's check payable to "Treasurer, the United States of America," and by delivering the check to:

U.S. Environmental Protection Agency  
Region 5  
Cincinnati Finance Center

EPA-R5ORC-AE2010-593

P.O. Box 979077  
St. Louis, MO 63197-9000

Respondent must include the case name and docket number on the check and in the letter transmitting the check. Respondent simultaneously must send copies of the check and transmittal letter to John Matson and to:

Attn: Compliance Tracker, (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3511

#### Opportunity to Request a Hearing

- 51.57. The Administrator must provide an opportunity to request a hearing to any person against whom the Administrator proposes to assess a penalty under Section 113(d)(2) of the CAA, 42 U.S.C. § 7413(d)(2). Respondent has the right to request a hearing on any material fact alleged in the amended complaint, or on the appropriateness of the proposed penalty, or both. To request a hearing, Respondent must specifically make the request in its answer, as discussed in paragraphs 582 through 6357 below.

#### Answer

- 52.58. Respondent must file a written answer to this amended complaint if Respondent contests any material fact of the amended complaint; contends that the proposed penalty is inappropriate; or contends that it is entitled to judgment as a matter of law. To file an answer, Respondent must file the original written answer and one copy with the Regional Hearing Clerk at the address specified in paragraph 5448, above.
- 53.59. If Respondent chooses to file a written answer to the amended complaint, it must do so within 30 calendar days after receiving the amended complaint. In counting the 30-day time period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.
- 54.60. Respondent's written answer must clearly and directly admit, deny, or explain each of the factual allegations in the amended complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied.
- 55.61. Respondent's failure to admit, deny, or explain any material factual allegation in the amended complaint constitutes an admission of the allegation.

~~56.62.~~ Respondent's answer must also state: (a) the circumstances or arguments which Respondent alleges constitute grounds of defense; (b) the facts that Respondent disputes; (c) the basis for opposing the proposed penalty; and (d) whether Respondent requests a hearing as discussed in paragraph ~~574~~ above.

~~57.63.~~ If Respondent does not file a written answer within 30 calendar days after receiving this amended complaint the Presiding Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules. Default by Respondent constitutes an admission of all factual allegations in the amended complaint and a waiver of the right to contest the factual allegations. Respondent must pay any penalty assessed in a default order without further proceedings 30 days after the order becomes the final order of the Administrator of EPA under Section 22.27(c) of the Consolidated Rules.

#### Settlement Conference

~~58.64.~~ Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of this proceeding and to arrive at a settlement. To request an informal settlement conference, Respondent may contact John Matson at the address or phone number specified in paragraph ~~5549~~, above.

~~59.65.~~ Respondent's request for an informal settlement conference does not extend the 30 calendar day period for filing a written answer to this amended complaint. Respondent may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. EPA, however, will not reduce the penalty simply because the parties hold an informal settlement conference.

#### Continuing Obligation to Comply

~~60.66.~~ Neither the assessment nor payment of a civil penalty will affect Respondent's continuing obligation to comply with the CAA and any other applicable federal, state, or local law.

Date

Cheryl L. Newton  
Director  
Air and Radiation Division  
U.S. Environmental Protection Agency  
Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3511

EPA-R5ORC-AE2010-595

In the Matter of Heritage-WTI, Inc.  
Docket No. CAA-05-2011-0012

CERTIFICATE OF SERVICE

I hereby certify that on June 20, 2011, a copy of Complainant's Motion for Leave to File an Amended Complaint was filed by hand delivery with:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

I further certify that on that date, I arranged for a copy of same to be sent via certified mail, return receipt requested, to the Respondent by placement of it in the custody of the United States Postal Service, addressed as follows:

Michael Scanlon, Esq.  
Barnes & Thornburg LLP  
11 South Meridian Street  
Indianapolis, Indiana 46204-3535

I further certify that on that date, I arranged for a copy of same to be sent via pouch delivery to:

Chief Administrative Judge Susan L. Biro  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
Mail Code 1900L  
1200 Pennsylvania Ave., NW  
Washington D.C. 20460-2001

06/20/2011   
Date

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR

In the Matter of:

Heritage-WTI, Inc,

Respondent.

)  
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Docket No. CAA-05-2011-0012

**INITIAL PREHEARING ORDER**

As you were previously notified, I have been designated to preside over the above-captioned matter. This proceeding will be governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.1 *et seq.* ("Rules of Practice"). The parties are advised that a Practice Manual and Citizen's Guide, which serve as aids to understanding the practices and procedures applicable to proceedings before the Administrative Law Judges from the U.S. Environmental Protection Agency's Office of Administrative Law Judges ("OALJ"), are accessible at <http://www.epa.gov/oalj/rules>.

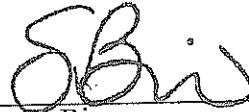
Prior to the designation of this case to the undersigned, the parties engaged in the Alternative Dispute Resolution ("ADR") process offered by the OALJ in an effort to resolve this matter amicably. On June 1, 2011, the Administrative Law Judge serving as a neutral during the ADR process issued an Order Terminating Alternative Dispute Resolution and Returning Proceeding to Chief Judge. The Order of June 1, 2011, states that Complainant represented in a status report dated May 26, 2011, that Complainant anticipates filing a fully-executed Consent Agreement and Final Order ("CAFO") on or before June 30, 2011. The Order further states, however, that the status report "makes clear that the parties have yet to resolve their differences as to the reduction in the proposed penalty attributable to a SEP [Supplemental Environmental Project] proposed by Respondent and accepted by the Agency."

On June 2, 2011, the OALJ received a Second Joint Motion to Extend Alternative Dispute Process ("Motion"), which was filed by the parties on May 31, 2011. In the Motion, the parties request an extension of the ADR process until June 30, 2011, on the grounds that the parties "currently anticipate that no later than June 30, 2011, they will be able to successfully negotiate the terms of their settlement agreement and submit to the Court a CAFO setting forth the terms of the settlement."

This Motion has been deemed moot by the Order of June 1, 2011, terminating the ADR process. However, based upon their representations in the Motion, the parties are hereby **ORDERED** to file a fully-executed CAFO no later than **June 30, 2011**, with a copy **contemporaneously sent to the undersigned by facsimile or mail.**



FAILURE TO FILE THE CAFO IN A TIMELY MANNER MAY RESULT IN  
ENTRY OF AN ORDER OF DISMISSAL OR DEFAULT, AS APPROPRIATE,  
WITHOUT FURTHER NOTICE.



---

Susan L. Biro  
Chief Administrative Law Judge

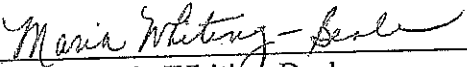
Dated: June 3, 2011  
Washington, DC

EPA-R5ORC-AE2010-598

In the Matter of Heritage-WTL, Inc., Respondent  
Docket No.CAA-05-2011-0012

CERTIFICATE OF SERVICE

I certify that the foregoing **Initial Prehearing Order**, dated June 3, 2011, was sent this day in the following manner to the addressees listed below.

  
\_\_\_\_\_  
Maria Whiting-Beale  
Staff Assistant

Dated: June 3, 2011

Original And One Copy By Pouch Mail To:

LaDawn Whitehead  
Regional Hearing Clerk  
U.S. EPA  
77 West Jackson Boulevard, E-19J  
Chicago, IL 60604-3590

Copy By Pouch Mail To:

John Matson, Esquire  
Associate Regional Counsel  
U.S. EPA  
77 West Jackson Boulevard, C-14J  
Chicago, IL 60604-3590

Copy By Regular Mail To:

Michael Scanlon, Esquire  
Barnes & Thornburg, LLP  
11 South Meridian Street  
Indianapolis, IN 46204

EPA-R5ORC-AE2010-599

RECEIVED  
JUN 10 2011  
EPA-R5ORC-AE2010-599

RECEIVED  
JUN 10 2011  
EPA-R5ORC-AE2010-599

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

|                     |   |                             |
|---------------------|---|-----------------------------|
| In the Matter of    | ) |                             |
|                     | ) |                             |
| Heritage-WTI, Inc., | ) | Docket No. CAA-05-2011-0012 |
|                     | ) |                             |
|                     | ) |                             |
| Respondents         | ) |                             |

Order Of Designation

Chief Administrative Law Judge Susan L. Biro, U.S. Environmental Protection Agency, Washington, D.C., is hereby designated as the Administrative Law Judge to preside in this proceeding under Section 113(d) of the Clean Air Act, 42 U.S.C. §7413(d), and pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR Part 22.



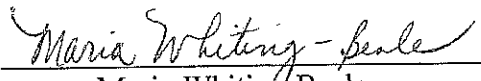
Susan L. Biro  
Chief Administrative Law Judge

Dated: June 2, 2011  
Washington, D.C.

In the Matter of Heritage-WTI, Inc., Respondent  
Docket No.CAA-05-2011-0012

CERTIFICATE OF SERVICE

I certify that the foregoing **Order Of Designation**, dated June 2, 2011, was sent this day in the following manner to the addressees listed below.

  
\_\_\_\_\_  
Maria Whiting-Beale  
Staff Assistant

Dated: June 2, 2011

Original And One Copy By Pouch Mail To:

LaDawn Whitehead  
Regional Hearing Clerk  
U.S. EPA  
77 West Jackson Boulevard, E-19J  
Chicago, IL 60604-3590

Copy By Pouch Mail To:

John Matson, Esquire  
Associate Regional Counsel  
U.S. EPA  
77 West Jackson Boulevard, C-14J  
Chicago, IL 60604-3590

Copy By Regular Mail To:

Michael Scanlon, Esquire  
Barnes & Thornburg, LLP  
11 South Meridian Street  
Indianapolis, IN 46204

10/10/11 10:10:10  
EPA-R5ORC-AE2010-601

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR

In the ADR Matter of

Heritage- WTI, Inc.

Respondent

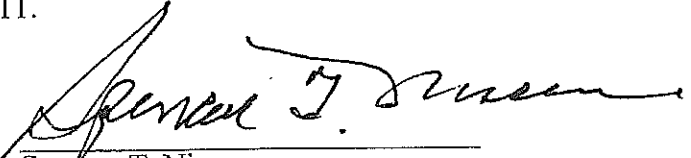
)  
)  
) Docket No. CAA-05-2011-0012  
)  
)

**ORDER TERMINATING  
ALTERNATIVE DISPUTE RESOLUTION PROCESS AND RETURNING  
PROCEEDING TO CHIEF JUDGE**

The ADR Process in this matter, as extended, expired on May 26, 2011. While complainant's status report, dated May 26, 2011 indicates that Complainant anticipate filing a fully executed CAFO on or before June 30, 2011, the report also makes it clear that the parties have yet to resolve their differences as to the reduction in the proposed penalty attributable to a SEP proposed by Respondent and accepted by the Agency.

In view of the foregoing, the ADR process is terminated and this proceeding is returned to the chief Judge.

Dated this 1<sup>th</sup> day of June 2011.

  
\_\_\_\_\_  
Spencer T. Nissen  
Administrative Law Judge

So Ordered.

EPA-R5ORC-AE2010-602

In the ADR matter of *Heritage- WTI, Inc.* Respondent.  
Docket No. CAA-05-2011-0012

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order Terminating Alternative Dispute Resolution Process**, dated June 1, 2011 was sent this day in the following manner to the addressees listed below.

  
Knolyn R. Jones  
Legal Staff Assistant

Original and One Copy by Pouch Mail to:

LaDawn Whitehead  
Regional Hearing Clerk  
U.S. EPA, Region V, MC-E-19J  
77 West Jackson Blvd.,  
Chicago, IL 60604-3590

One Copy by Pouch Mail to:

John Matson, Esq.  
Associate Regional Counsel  
U.S. EPA, Region V  
77 West Jackson Blvd., C-14J  
Chicago, IL 60604-3590

One Copy by Regular Mail to:

Michael Scanlon  
Barnes & Thornburg, LLP  
11 South Meridian Street  
Indianapolis, Indiana 46204

RECEIVED  
JUN 14 2011  
EPA-R5ORC-AE2010-603

RECEIVED  
JUN 14 2011  
EPA-R5ORC-AE2010-603

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

2011 MAY 31 PM 2:05

IN THE MATTER OF:

Heritage-WTI, Inc.

East Liverpool, Ohio,

Respondent.

)  
)  
)  
)  
)  
)

Docket No. CAA-05-2011-0012

**Second Joint Motion to Extend Alternative Dispute Process**

Complainant, the United States Environmental Protection Agency, Region 5, and Respondent, Heritage-WTI, Inc. ("WTI") hereby move the Court for an extension for the Alternative Dispute Resolution Process ("ADR") in the above-captioned case until June 30, 2011, and in support state as follows.

On February 10, 2010, Chief Judge Biro initiated the ADR process to facilitate the possible settlement of EPA's allegations against WTI, with the Honorable Judge Nissen designated as neutral. The ADR process was automatically scheduled to terminate on April 11, 2011, but was extended to May 26, 2011.

The Parties held a settlement conference in Chicago on March 15, 2011, at which they reached an agreement under which WTI would pay a cash penalty and perform a Supplemental Environmental Project ("SEP"). WTI subsequently prepared and transmitted a SEP proposal to Region 5, which Region 5 has approved. Region 5 prepared and transmitted to WTI the Consent Agreement and Final Order ("CAFO") establishing the terms of the Parties' agreement, WTI responded with comments, which Region 5 has reviewed. WTI's counsel has discussed with his client the value Region 5 is willing to assign to the SEP to mitigate the amount of cash penalty WTI must pay. Region 5 has incorporated WTI's concerns into the CAFO and transmitted it to WTI's counsel.

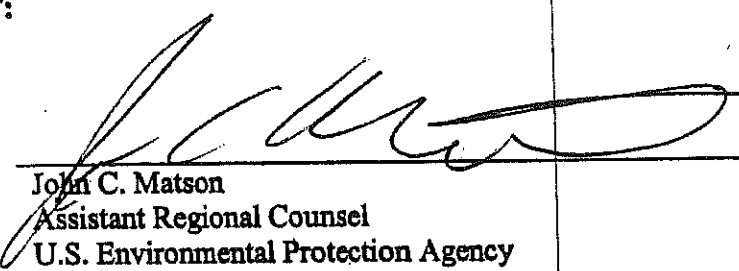
EPA-R5ORC-AE2010-604

The Parties currently anticipate that no later than June 30, 2011, they will be able to successfully negotiate the terms of their settlement agreement and submit to the Court a CAFO setting forth the terms of the settlement. The Parties therefore move this Honorable Court for an Order extending the ADR Process until June 30, 2011.

Respectfully Submitted,

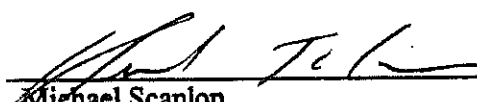
**COUNSEL FOR COMPLAINANT:**

May 31, 2011  
Date

  
John C. Matson  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region 5

**COUNSEL FOR RESPONDENT:**

May 31, 2011  
Date

  
Michael Scanlon  
Barnes & Thornburg LLP  
Counsel for Heritage-WTI, Inc.

EPA-R5ORC-AE2010-605



In the Matter of Heritage-WTI, Inc.  
Docket No. CAA-05-2011-0012

2011 MAY 31 PM 2:06

**CERTIFICATE OF SERVICE**

I certify that on May 31, 2011, I filed by hand delivery a copy of the Parties' Second Joint Motion to Extend Alternative Dispute Process to:

Regional Hearing Clerk  
United States Environmental Protection Agency  
Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604-1098

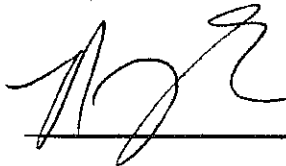
I further certify that on this date I mailed a correct copy of the same by first-class, postage prepaid, certified mail, return receipt requested, to the Respondent, by placement of it in the custody of the United States Postal Service addressed as follows:

Michael Scanlon, Esq.  
Barnes & Thornburg LLP  
11 South Meridian Street  
Indianapolis, Indiana 46204-3535

I further certify that on this date I arranged for a correct copy of the same via pouch delivery to:

Chief Administrative Judge Susan L. Biro  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
Mail Code 1900L  
1200 Pennsylvania Ave., NW  
Washington D.C. 20460-2001

on the 31<sup>st</sup> day of May 2010.



CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0006 1564 9877

EPA-R5ORC-AE2010-606

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

|                       |   |                             |
|-----------------------|---|-----------------------------|
| In the Matter of:     | ) |                             |
|                       | ) |                             |
| Heritage-WTI, Inc.    | ) | Docket No. CAA-05-2011-0012 |
| East Liverpool, Ohio, | ) |                             |
|                       | ) |                             |
| <u>Respondent.</u>    | ) |                             |

**COMPLAINANT'S STATUS REPORT**

Complainant, the United States Environmental Protection Agency, Region 5 hereby files this report to advise the Court of the status of the above-captioned matter.

On February 10, 2010, Chief Judge Biro initiated the ADR process to facilitate the possible settlement of EPA's allegations against Respondent, Heritage-WTI, Inc. ("WTI"), with the Honorable Judge Nissen designated as neutral. The ADR process was automatically scheduled to terminate on April 11, 2011, but was subsequently extended to May 26, 2011.

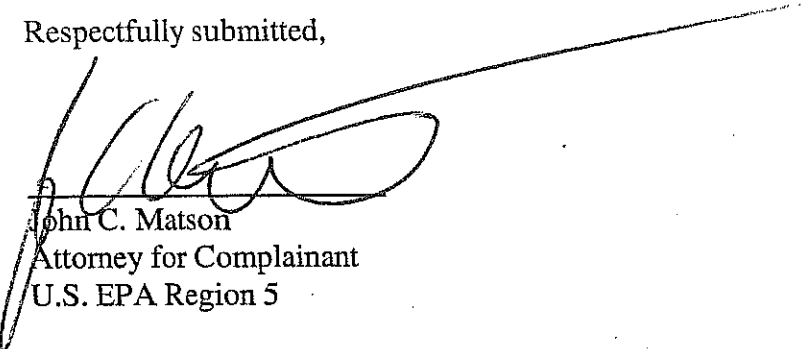
The current status of the case is that the Parties held a settlement conference in Chicago on March 15, 2011, at which they reached an agreement under which WTI would pay a cash penalty and perform a Supplemental Environmental Project ("SEP"). WTI subsequently prepared and transmitted a SEP proposal to Region 5, which Region 5 has approved. Region 5 prepared and transmitted to WTI the Consent Agreement and Final Order ("CAFO") establishing the terms of the Parties' agreement, WTI responded with comments, which Region 5 has reviewed. WTI's counsel is currently discussing with his client the value Region 5 is willing to assign to the SEP to mitigate the amount of cash penalty WTI must pay.

Based on WTI's concern, Complainant does not anticipate filing the CAFO with the Court by May 26, 2011, even though the Parties have diligently worked to finalize the settlement terms. Complainant believes it will require three to four weeks to settle the differences, have the

CAFO undergo internal sign-off and review at Region 5, and have the Regional Administrator execute and issue the Final Order. Complainant anticipates that it should be able to file the fully-executed CAFO prior to the June 30, 2011.

Respectfully submitted,

Dated: 5-26-11



John C. Matson  
Attorney for Complainant  
U.S. EPA Region 5

EPA-R5ORC-AE2010-608

In the Matter of Heritage-WTI, Inc.  
Docket No. CAA-05-2011-0012

CERTIFICATE OF SERVICE

I hereby certify that on May 26, 2011, a copy of Complainant's Status Report was filed by hand delivery with:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604


I further certify that on that date, I arranged for a copy of same to be sent via certified mail, return receipt requested, to the Respondent by placement of it in the custody of the United States Postal Service, addressed as follows:

Michael Scanlon, Esq.  
Barnes & Thornburg LLP  
11 South Meridian Street  
Indianapolis, Indiana 46204-3535

I further certify that on that date, I arranged for a copy of same to be sent via pouch delivery to:

Chief Administrative Judge Susan L. Biro  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
Mail Code 1900L  
1200 Pennsylvania Ave., NW  
Washington D.C. 20460-2001

5-26-11  
Date

  
\_\_\_\_\_

EPA-R5ORC-AE2010-609

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR

In the ADR Matter of

Heritage- WTI, Inc.

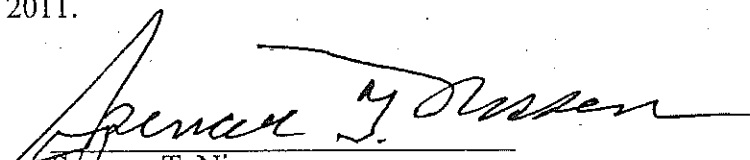
Respondent

)  
)  
) Docket No. CAA-05-2011-0012  
)  
)

**ORDER GRANTING EXTENSION OF  
ALTERNATIVE DISPUTE RESOLUTION PROCESS**

The parties have filed a Joint Motion for Extension of Time to Extend Alternative Dispute Resolution (ADR) process for 45 days. The parties have represented they have made progress in their settlement negotiations and that an extension of the ADR period would aid in their progress toward a settlement of this matter. Accordingly, the time period provided for ADR is extended through and including May 26, 2011.

Dated this 8<sup>th</sup> day of April 2011.

  
Spencer T. Nissen  
Administrative Law Judge

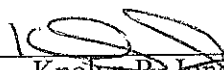
So Ordered.

EPA-R5ORC-AE2010-610

In the ADR matter of *Heritage- WTI, Inc.* Respondent.  
Docket No. CAA-05-2011-0012

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order Extending Alternative Dispute Resolution Process**, dated April 8, 2011 was sent this day in the following manner to the addressees listed below.

  
Knolyn R. Jones  
Legal Staff Assistant

Original and One Copy by Pouch Mail to:

LaDawn Whitehead  
Regional Hearing Clerk  
U.S. EPA, Region V, MC-E-19J  
77 West Jackson Blvd.,  
Chicago, IL 60604-3590

One Copy by Pouch Mail to:

John Matson, Esq.  
Associate Regional Counsel  
U.S. EPA, Region V  
77 West Jackson Blvd., C-14J  
Chicago, IL 60604-3590

One Copy by Regular Mail to:

Michael Scanlon  
Barnes & Thornburg, LLP  
11 South Meridian Street  
Indianapolis, Indiana 46204

EPA-R5ORC-AE2010-611

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF:

Heritage-WTI, Inc.

East Liverpool, Ohio,

Respondent.

)  
)  
)  
)  
)  
)

Docket No. CAA-05-2011-0012

**Joint Motion to Extend Alternative Dispute Process for 45 Days**

Complainant, the United States Environmental Protection Agency, Region 5, and Respondent, Heritage-WTI, Inc. ("WTI") hereby move the Court for a 45 day extension for the Alternative Dispute Resolution Process ("ADR") in the above-captioned case, and in support state as follows.

On February 10, 2010, Chief Judge Biro initiated the ADR process to facilitate the possible settlement of EPA's allegations against WTI, with the Honorable Judge Nissen designated as neutral. The ADR process was automatically scheduled to terminate on April 11, 2011.

The Parties held a settlement conference in Chicago on March 15, 2011, during which WTI made a settlement proposal to Region 5. The Parties eventually reached a settlement in principle under which WTI would pay a cash penalty and perform a Supplemental Environmental Project ("SEP").

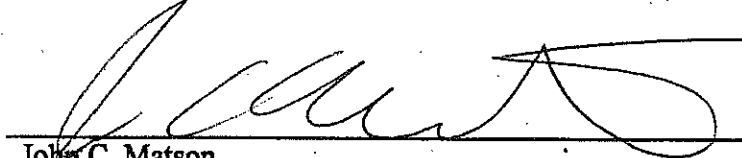
WTI is currently preparing a SEP proposal it will transmit to Region 5, which Region 5 will analyze and submit its comments to WTI on the SEP proposal. Should the Parties reach agreement on WTI's proposed SEP, Region 5 will then submit for signoff in accordance with its procedures, the SEP proposal and a Consent Agreement and Final Order ("CAFO") establishing the Parties' agreement. During this time the Parties will work diligently to achieve these results.

The Parties currently anticipate that no later than May 26, 2011, they will be able to successfully negotiate the terms of their settlement agreement (including the terms of a mutually agreed upon SEP), and submit to the Court a CAFO setting forth the terms of the settlement. The Parties therefore move this Honorable Court for an Order extending the ADR Process an additional 45 days until May 26, 2011.

Respectfully Submitted,


**COUNSEL FOR COMPLAINANT:**

April 4, 2011  
Date

  
John C. Matson  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region 5

**COUNSEL FOR RESPONDENT:**

April 4, 2011  
Date

  
Michael Scanlon  
Barnes & Thornburg LLP  
Counsel for Heritage-WTI, Inc.

EPA-R5ORC-AE2010-613



In the Matter of Heritage-WTI, Inc.  
Docket No. CAA-05-2011-0012

**CERTIFICATE OF SERVICE**

I certify that on April 4, 2011, I filed by hand delivery a copy of the Parties' Joint Motion to Extend Alternative Dispute Process for 45 Days to:

Regional Hearing Clerk  
United States Environmental Protection Agency  
Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604-1098

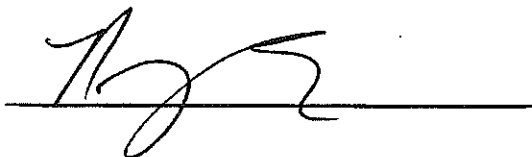
I further certify that on this date I mailed a correct copy of the same by first-class, postage prepaid, certified mail, return receipt requested, to the Respondent, by placement of it in the custody of the United States Postal Service addressed as follows:

Michael Scanlon, Esq.  
Barnes & Thornburg LLP  
11 South Meridian Street  
Indianapolis, Indiana 46204-3535

I further certify that on this date I arranged for a correct copy of the same via pouch delivery to:

Chief Administrative Judge Susan L. Biro  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
Mail Code 1900L  
1200 Pennsylvania Ave., NW  
Washington D.C. 20460-2001

on the 4<sup>th</sup> day of April 2010.



CERTIFIED MAIL RECEIPT NUMBER:

7001 0320 0006 1564 9693

EPA-R5ORC-AE2010-614

other bcc's: J. Matson, C-14J  
C. Hall, AE-17J

|                |   |
|----------------|---|
| Creation Date: | April 4, 2011   |
| Filename:      | C:\EPAWORK\WasteCombustion\HazWaste\Sources\WT\CPT2009\APOfy2011q1.docx |
| Legend:        | ARD:AECAB:AECAS(MN/OH):c.hall   |

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
  
BEFORE THE ADMINISTRATOR

In the Matter of

Heritage -WTI, Inc.

Respondent

)  
)  
)  
)  
)  
)  
)

Docket No. CAA-05-2011-0012

**ORDER INITIATING ALTERNATIVE DISPUTE  
RESOLUTION PROCESS AND APPOINTING NEUTRAL**

Pursuant to the request of the parties, Judge Spencer T. Nissen, is hereby designated as a neutral to initiate and conduct such processes as may facilitate a settlement of this proceeding.

The following procedures shall apply:

1. The Alternative Dispute Resolution (ADR) process will be conducted in a confidential manner. The Judge who serves as the neutral will not disclose to anyone the contents of any of the parties' ADR communications.
2. For the ADR process to be effective, the persons communicating with the neutral must either have authority to commit his or her side to a settlement, or have ready access to someone with such authority.
3. Unless terminated earlier at the request of either party, the ADR process shall automatically terminate on **April 11, 2011**. An extension of up to 60 days may be granted by the undersigned upon request of the ADR neutral, but in no event shall ADR continue for longer than 4 months. At that time, if no settlement has been reached, the case will be remanded to the litigation Judge to proceed with the litigation process in an expedited manner.
4. A party requesting termination of this process shall so advise the assigned neutral Judge either orally or in writing. The neutral Judge shall forward the request to the Chief Administrative Law Judge. The dispute resolution process initiated by this Order shall terminate upon order of the Chief Administrative Law Judge.

5. At the termination of the ADR process, the parties will be sent a questionnaire to elicit their views and the experience with the process. The contents of individual questionnaires will be kept confidential and will be made available to the neutrals and others only in a composite format.

A handwritten signature in black ink, appearing to read 'S. Biro', is positioned above a horizontal line.

Susan L. Biro

Chief Administrative Law Judge

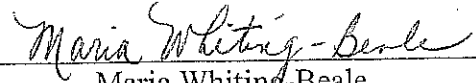
Dated: February 10, 2011  
Washington, DC

EPA-R5ORC-AE2010-617

In the Matter of Heritage-WTI, Inc., Respondent  
Docket No. CAA-05-2011-0012

CERTIFICATE OF SERVICE

I certify that the foregoing **Order Initiating Alternative Dispute Resolution Process And Appointing Neutral**, dated February 10, 2011, was sent this day in the following manner to the addressees listed below.

  
\_\_\_\_\_  
Maria Whiting-Beale  
Staff Assistant

Dated: February 10, 2011

Original And One Copy By Pouch Mail To:

La Dawn Whitehead  
Regional Hearing Clerk  
U.S. EPA  
77 West Jackson Boulevard, E-19J  
Chicago, IL 60604-3590

Copy By Pouch Mail To:

John Matson, Esquire  
Associate Regional Counsel  
U.S. EPA  
77 West Jackson Boulevard, C-14J  
Chicago, IL 60604-3590

Copy By Regular Mail To:

Michael T. Scanlon, Esquire  
Barnes & Thornburg LLP  
11 South Meridian Street  
Indianapolis, IN 46204-3535



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, DC 20460

January 28, 2011

OFFICE OF  
THE ADMINISTRATIVE  
LAW JUDGES

John Matson, Esquire  
Associate Regional Counsel  
U.S. EPA  
77 West Jackson Boulevard, C-14J  
Chicago, IL 60604-3590

Re: Heritage-WTI, Inc.  
Docket No. CAA-05-2011-0012

Dear Mr. Matson:

This Office, the Office of Administrative Law Judges, offers an Alternative Dispute Resolution (ADR) process to facilitate the settlement of adjudicative cases. Please inform my staff assistant, Maria Whiting-Beale by **February 11, 2011**, as directed below, whether you accept or decline this offer to participate in ADR in an effort to settle the above cited case. The ADR process will be conducted pursuant to the Administrative Dispute Resolution Act of 1996, 5 U.S.C. §§ 571 *et seq.*, by a Judge of this Office serving as a neutral. The process will be entirely voluntary and completely confidential; both of these points, together with general procedures, are reviewed below.

Voluntary ADR will be used in a case only if both EPA and Respondent accept ADR; the choice to use or not to use ADR does not prejudice either party. If ADR is utilized, either party may terminate the ADR process at any time.

Initial Procedures A Judge in this Office will serve as a neutral. The ADR Judge will ordinarily begin by arranging a telephone conference with the parties to establish procedures.

Types of mediation available Our office offers the following types of ADR: mediation, facilitation, and neutral evaluation. The parties are encouraged to discuss with the neutral Judge the type of ADR they prefer, and come to an agreement with the neutral Judge as to which type of ADR will be employed in the case. If, during the course of ADR, the parties mutually decide that they would prefer another type of ADR, they may jointly request that the neutral Judge adjust the process accordingly.

*Facilitation* is a method in which the neutral Judge acts as a facilitator, promoting communication and understanding of the issues, in a less active role than as a mediator. The focus of the facilitator Judge is to provide structure and moderate the discussion among the parties to assist them in coming to a settlement. Facilitation

EPA-R5ORC-AE2010-619

may be particularly useful in cases where there is more than one respondent, where the parties are represented by counsel who are very experienced in settling environmental enforcement cases and who agree that settlement is very likely, where a Supplemental Environmental Project is likely to be proposed, or other cases where flexibility in the ADR process is needed.

*Neutral Evaluation* is a method in which the neutral Judge, to assist the parties in reaching a settlement, hears each party's position and arguments, either in writing, orally or both, may request the parties to submit documents or other information, then gives an oral opinion on the strong and weak points of each party's case, and may, if requested by the parties, provide an opinion of the likely outcome of the case if it went to hearing. Neutral Evaluation may be particularly useful in cases in which the respondent has one or more affirmative defenses, or where a crucial issue in the case is a question of law.

*Mediation* is a method in which the neutral Judge, as mediator, hears each party's position and arguments, either in writing, orally or both, may ask the parties questions, may request the parties to submit documents or other information, helps identify the factual and legal issues, enables each party to understand the other party's position and arguments, keeps the focus on the facts and issues that may lead toward settlement, and helps the parties explore their options, including practical concerns, to assist the parties in reaching a settlement. The mediator may give an opinion on the strengths and/or weaknesses of a case, if requested by the parties. Mediation is particularly useful for cases in which the respondent is not represented by counsel (*pro se*), where the parties dispute the facts of the case, or where the parties do not agree to neutral evaluation or facilitation.

Authorization to Commit For the ADR process to be effective, the persons communicating with the neutral must either have authority to commit his or her side to a settlement, or have ready access to somebody with such authority.

Confidential The ADR process will be conducted in a confidential manner, in accord with Section 574 of the Administrative Dispute Resolution Act of 1996. The Judge who serves as the neutral will not disclose to anyone the contents of any of the parties' ADR communications.

Method of communication All ADR discussions and conferences are held by telephone, except in exceptional cases in which the parties can demonstrate, and the neutral Judge agrees, that an in-person or video settlement conference, or a view by the parties and neutral Judge of the of the facility or site at issue, is necessary.

Non-binding The neutral Judge has no authority to impose a decision or settlement of the case on the parties. The purpose of ADR is to facilitate a settlement between the parties.

Impartial The neutral Judges, as all Judges in this Office, render their decisions and opinions independent of any supervision or direction by any prosecuting or investigating employee or agent of the Environmental Protection Agency, and independent of the influence of any interested person outside the Agency, pursuant to Sections 554(d) and 557 of the Administrative Procedure Act (APA). The Judges are certified as administrative law judges by the Office of Personnel Management and are appointed in accordance with 5 U.S.C. § 3105. The Judges are not subject to evaluation by the Environmental Protection Agency, or by any component or employee of EPA. These measures ensure the fair and impartial resolution of proceedings.

Duration Unless terminated earlier by either party, the ADR process will continue for 60 days from the date of the case assignment to the ADR Judge; after that time, if no settlement has been reached, the case will be assigned to another Judge to commence the litigation process.

Follow Up At the termination of the ADR process, I will send the parties a questionnaire to elicit their views and experience with the process. The contents of individual questionnaires will be kept confidential and will be made available to the neutrals and others only in a composite format.

Again, please inform Maria Whiting-Beale by **February 11, 2011**, whether you accept or decline participation in the ADR process that I have described. It is preferred that you inform Ms. Whiting-Beale by e-mail at <[whiting-beale.maria@epa.gov](mailto:whiting-beale.maria@epa.gov)> or by facsimile at (202) 565-0044. However, you may inform her by calling this Office, 202 564-6271, and leaving a message for her, or by letter received in this Office on or before the due date. The mailing address **if sent by mail** is: U.S. EPA, Office of Administrative Law Judges, Mail Code 1900L, 1200 Pennsylvania Avenue, NW, Washington, DC 20460-2001. **For hand-delivery by Federal Express or another delivery service** which x-rays packages as a routine security procedure, the address is: U.S. EPA, Office of Administrative Law Judges, 1099 14th Street, N.W., Suite 350, Washington, DC 20005. Please also send a copy of your response to the Regional Hearing Clerk.

Your e-mail, fax, letter or phone message must state: (1) your name and phone number, (2) the name(s) of the respondent(s) named in the complaint, (3) the docket number, (4) the name of the party you represent, (5) whether you want ADR or do not want ADR. You may also inform Ms. Whiting-Beale as to whether another party in the case accepts or declines ADR, if that party has requested that you convey that information on that party's behalf. In that event, your e-mail, fax letter or phone message must state, in addition: (1) the name and telephone number of the person who requested you to convey the message, (2) the name of the party represented by that person, and (3) whether that party wants ADR or does not want ADR.

If you have another party in the case convey a message that you want ADR, then you should confirm, on or before the due date stated herein, that this Office has received the message.

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If no response is received in this Office by the deadline from you or another party on your behalf, it will be assumed that you **do not** wish to participate in ADR and the case will be assigned immediately to a Judge for litigation. **No extension of the deadline for deciding whether you wish to participate in ADR will be granted.** However, the ADR described above may be available later in the litigation process upon joint motion of all parties to initiate ADR, granted at the sole discretion of the presiding litigation Judge.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'S. Biro', written over a horizontal line.

Susan L. Biro  
Chief Administrative Law Judge

cc: Michael T. Scanlon, Esquire  
La Dawn Whitehead, Regional Hearing Clerk

EPA-R5ORC-AE2010-622



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, DC 20460

January 28, 2011

OFFICE OF  
THE ADMINISTRATIVE  
LAW JUDGES

Michael T. Scanlon, Esquire  
Barnes & Thornburg LLP  
11 South Meridian Street  
Indianapolis, IN 46204-3535

Re: Heritage-WTI, Inc.  
Docket No. CAA-05-2011-0012

Dear Mr. Scanlon:

This Office, the Office of Administrative Law Judges, offers an Alternative Dispute Resolution (ADR) process to facilitate the settlement of adjudicative cases. Please inform my staff assistant, Maria Whiting-Beale by **February 11, 2011**, as directed below, whether you accept or decline this offer to participate in ADR in an effort to settle the above cited case. The ADR process will be conducted pursuant to the Administrative Dispute Resolution Act of 1996, 5 U.S.C. §§ 571 *et seq.*, by a Judge of this Office serving as a neutral. The process will be entirely voluntary and completely confidential; both of these points, together with general procedures, are reviewed below.

Voluntary ADR will be used in a case only if both EPA and Respondent accept ADR; the choice to use or not to use ADR does not prejudice either party. If ADR is utilized, either party may terminate the ADR process at any time.

Initial Procedures A Judge in this Office will serve as a neutral. The ADR Judge will ordinarily begin by arranging a telephone conference with the parties to establish procedures.

Types of mediation available Our office offers the following types of ADR: mediation, facilitation, and neutral evaluation. The parties are encouraged to discuss with the neutral Judge the type of ADR they prefer, and come to an agreement with the neutral Judge as to which type of ADR will be employed in the case. If, during the course of ADR, the parties mutually decide that they would prefer another type of ADR, they may jointly request that the neutral Judge adjust the process accordingly.

*Facilitation* is a method in which the neutral Judge acts as a facilitator, promoting communication and understanding of the issues, in a less active role than as a mediator. The focus of the facilitator Judge is to provide structure and moderate the discussion among the parties to assist them in coming to a settlement. Facilitation

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may be particularly useful in cases where there is more than one respondent, where the parties are represented by counsel who are very experienced in settling environmental enforcement cases and who agree that settlement is very likely, where a Supplemental Environmental Project is likely to be proposed, or other cases where flexibility in the ADR process is needed.

*Neutral Evaluation* is a method in which the neutral Judge, to assist the parties in reaching a settlement, hears each party's position and arguments, either in writing, orally or both, may request the parties to submit documents or other information, then gives an oral opinion on the strong and weak points of each party's case, and may, if requested by the parties, provide an opinion of the likely outcome of the case if it went to hearing. Neutral Evaluation may be particularly useful in cases in which the respondent has one or more affirmative defenses, or where a crucial issue in the case is a question of law.

*Mediation* is a method in which the neutral Judge, as mediator, hears each party's position and arguments, either in writing, orally or both, may ask the parties questions, may request the parties to submit documents or other information, helps identify the factual and legal issues, enables each party to understand the other party's position and arguments, keeps the focus on the facts and issues that may lead toward settlement, and helps the parties explore their options, including practical concerns, to assist the parties in reaching a settlement. The mediator may give an opinion on the strengths and/or weaknesses of a case, if requested by the parties. Mediation is particularly useful for cases in which the respondent is not represented by counsel (*pro se*), where the parties dispute the facts of the case, or where the parties do not agree to neutral evaluation or facilitation.

Authorization to Commit For the ADR process to be effective, the persons communicating with the neutral must either have authority to commit his or her side to a settlement, or have ready access to somebody with such authority.

Confidential The ADR process will be conducted in a confidential manner, in accord with Section 574 of the Administrative Dispute Resolution Act of 1996. The Judge who serves as the neutral will not disclose to anyone the contents of any of the parties' ADR communications.

Method of communication All ADR discussions and conferences are held by telephone, except in exceptional cases in which the parties can demonstrate, and the neutral Judge agrees, that an in-person or video settlement conference, or a view by the parties and neutral Judge of the of the facility or site at issue, is necessary.

Non-binding The neutral Judge has no authority to impose a decision or settlement of the case on the parties. The purpose of ADR is to facilitate a settlement between the parties.

Impartial The neutral Judges, as all Judges in this Office, render their decisions and opinions independent of any supervision or direction by any prosecuting or investigating employee or agent of the Environmental Protection Agency, and independent of the influence of any interested person outside the Agency, pursuant to Sections 554(d) and 557 of the Administrative Procedure Act (APA). The Judges are certified as administrative law judges by the Office of Personnel Management and are appointed in accordance with 5 U.S.C. § 3105. The Judges are not subject to evaluation by the Environmental Protection Agency, or by any component or employee of EPA. These measures ensure the fair and impartial resolution of proceedings.

Duration Unless terminated earlier by either party, the ADR process will continue for 60 days from the date of the case assignment to the ADR Judge; after that time, if no settlement has been reached, the case will be assigned to another Judge to commence the litigation process.

Follow Up At the termination of the ADR process, I will send the parties a questionnaire to elicit their views and experience with the process. The contents of individual questionnaires will be kept confidential and will be made available to the neutrals and others only in a composite format.

Again, please inform Maria Whiting-Beale by **February 11, 2011**, whether you accept or decline participation in the ADR process that I have described. It is preferred that you inform Ms. Whiting-Beale by e-mail at <[whiting-beale.maria@epa.gov](mailto:whiting-beale.maria@epa.gov)> or by facsimile at (202) 565-0044. However, you may inform her by calling this Office, 202 564-6271, and leaving a message for her, or by letter received in this Office on or before the due date. The mailing address **if sent by mail is:** U.S. EPA, Office of Administrative Law Judges, Mail Code 1900L, 1200 Pennsylvania Avenue, NW, Washington, DC 20460-2001. **For hand-delivery by Federal Express or another delivery service** which x-rays packages as a routine security procedure, the address is: U.S. EPA, Office of Administrative Law Judges, 1099 14th Street, N.W., Suite 350, Washington, DC 20005. Please also send a copy of your response to the Regional Hearing Clerk.

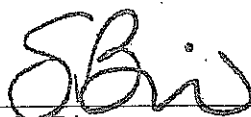
Your e-mail, fax, letter or phone message must state: (1) your name and phone number, (2) the name(s) of the respondent(s) named in the complaint, (3) the docket number, (4) the name of the party you represent, (5) whether you want ADR or do not want ADR. You may also inform Ms. Whiting-Beale as to whether another party in the case accepts or declines ADR, if that party has requested that you convey that information on that party's behalf. In that event, your e-mail, fax letter or phone message must state, in addition: (1) the name and telephone number of the person who requested you to convey the message, (2) the name of the party represented by that person, and (3) whether that party wants ADR or does not want ADR.

If you have another party in the case convey a message that you want ADR, then you should confirm, on or before the due date stated herein, that this Office has received the message.

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If no response is received in this Office by the deadline from you or another party on your behalf, it will be assumed that you **do not** wish to participate in ADR and the case will be assigned immediately to a Judge for litigation. **No extension of the deadline for deciding whether you wish to participate in ADR will be granted.** However, the ADR described above may be available later in the litigation process upon joint motion of all parties to initiate ADR, granted at the sole discretion of the presiding litigation Judge.

Very truly yours,



Susan L. Biro  
Chief Administrative Law Judge

cc: John Matson, Esquire  
La Dawn Whitehead, Regional Hearing Clerk

EPA-R5ORC-AE2010-626



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590  
January 26, 2011

REPLY TO THE ATTENTION OF  
E-19J

Honorable Susan L. Biro  
Office of Administrative Law Judges  
U. S. Environmental Protection Agency  
Ariel Rios Building, Mailcode: 1900L  
1200 Pennsylvania Ave., NW  
Washington, D.C. 20460

RE: In The Matter of: Heritage-WTI, Inc.  
Docket No.: CAA-05-2011-0012  
Complaint Date: December 22, 2010  
Total Proposed Penalty: \$151,800

Dear Judge Biro:

Enclosed is a copy of the Respondent's Answer to an Administrative Complaint for *Heritage-WTI, Inc.* in East Liverpool, Ohio.

Please assign an Administrative Law Judge for this case.

If you have questions contact me at (312) 886-3713.

Sincerely,

La Dawn Whitehead  
Regional Hearing Clerk

Enclosure

cc: Michael T. Scanlon, Esquire  
Barnes & Thornburg LLP  
Counsel for Hertiage-WTI, Inc.  
11 South Meridian Street  
Indianapolis, Indiana 46204-3535  
(317) 236-1313

John Matson, Esquire  
Associate Regional Counsel  
Office Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Blvd., C-14J  
Chicago, Illinois 60604-3590  
(312) 886-2243

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BARNES & THORNBURG LLP

11 South Meridian Street  
Indianapolis, IN 46204-3535 U.S.A.  
(317) 236-1313  
Fax (317) 231-7433  
www.btlaw.com

January 26, 2011

VIA HAND DELIVERY

Regional Hearing Clerk (E-19J)  
EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3511

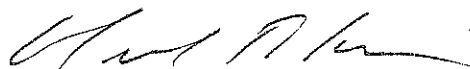
Re: In the Matter of Heritage-WTI, Inc.  
Docket No. CAA-05-2011-0012

Dear Regional Hearing Clerk:

Enclosed for filing are the original and one copy of Heritage-WTI, Inc.'s Answer to Complaint in the case In the Matter of Heritage-WTI, Inc., Docket No. CAA-05-2011-0012. Also enclosed is an additional copy of Heritage-WTI, Inc.'s Answer to Complaint. Please file-stamp the additional copy and provide it to the person hand delivering these documents who will return the file-stamped additional copy to me.

Thank you. If you have any questions, please contact me at 317/231-7387.

Sincerely,



Michael T. Scanlon, Esq.  
Barnes & Thornburg LLP  
Counsel for Heritage-WTI, Inc.

Enclosures

cc: John Matson, Associate Regional Counsel, EPA Region 5 (via certified mail)  
Mr. John Peterka, Heritage-WTI, Inc. (via regular mail)  
Ms. Carrie Beringer, Heritage-WTI, Inc. (via regular mail)

EPA-R5ORC-AE2010-628

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|                       |   |   |
|-----------------------|---|---|
| IN THE MATTER OF:     | ) | Docket No. CAA-05-2011-0012                       |
|                       | ) |   |
| Hetitage-WTI, Inc.    | ) | Complaint to Assess a Civil Penalty under Section |
| East Liverpool, Ohio, | ) | 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d)  |
|                       | ) |   |
| <b>Respondent</b>     | ) |   |

Heritage-WTI, Inc. (hereinafter “WTP”), by counsel, hereby files its answer to the complaint issued by the United States Environmental Protection Agency, Region 5 (“EPA”). WTI received the complaint on December 27, 2010. Therefore, this answer has been timely filed.

- ### General Allegations

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13. WTI admits the factual allegations contained in paragraph 13 except as follows. WTI denies the factual allegation in paragraph 13 regarding the "April 19, 1996" construction date as the applicable date to determine if a source is an "existing source" because that date is incorrect based on the language in 40 C.F.R. § 63.1206(a)(1)(ii)(B). The correct construction date pursuant to 40 C.F.R. § 63.1206(a)(1)(ii)(B) to determine if a source is an "existing source" is April 20, 2004.

14. The regulations speak for themselves. To the extent paragraph 14 contains factual allegations, WTI admits the factual allegations in paragraph 14.

15. The regulations speak for themselves. To the extent paragraph 15 contains factual allegations, WTI admits the factual allegations in paragraph 15.

16. WTI admits the factual allegations in paragraph 16.

17. WTI admits the factual allegations in paragraph 17.

18. WTI admits the factual allegations in paragraph 18.

19. WTI admits the factual allegations in paragraph 19.

20. WTI admits the factual allegations in paragraph 20.

21. WTI admits the factual allegations in paragraph 21.

22. WTI admits the factual allegations in paragraph 22.

23. WTI admits the factual allegations in paragraph 23.

24. WTI admits the factual allegations in paragraph 24 except as follows. Because the Spring CPT as that term was defined in the complaint (hereinafter "Spring CPT") was not conducted on April 2, 2010 and the run performed on March 30, 2010 was aborted and not included as part of the Spring CPT, WTI denies that March 30, 2010 and April 2, 2010 should be included as dates during which the Spring CPT occurred.

25. WTI admits the factual allegations contained in paragraph 25.

26. WTI admits the factual allegations contained in paragraph 26.

27. WTI admits the factual allegations contained in paragraph 27.

28. WTI admits the factual allegations contained in paragraph 28.

29. WTI admits the factual allegations contained in paragraph 29.

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### Count I

30. WTI incorporates paragraphs 1 through 29 of this answer as if they were set forth fully in this paragraph.

31. The regulation speaks for itself. To the extent paragraph 31 contains factual allegations, WTI admits the factual allegations contained in paragraph 31.
32. WTI admits the factual allegations contained in paragraph 32.
33. WTI admits the factual allegations contained in paragraph 33.
34. WTI admits the factual allegations contained in paragraph 34.
35. WTI denies the factual allegations contained in paragraph 35 for the reasons provided in the portion of this answer titled "Disputed Facts and Circumstances and Arguments that are Alleged to Constitute Grounds of any Defense."

## **Count II**

36. WTI incorporates paragraphs 1 through 29 of this answer as if they were set forth fully in this paragraph.
37. The regulation speaks for itself. To the extent paragraph 37 contains factual allegations, WTI admits the factual allegations contained in paragraph 37.
38. WTI admits the factual allegations contained in paragraph 38.
39. WTI denies the factual allegations contained in paragraph 39. The average mercury emission concentration during the Spring CPT was 290.6 µg/dscm @ 7% O<sub>2</sub>, not 290.7 µg/dscm @ 7% O<sub>2</sub> as alleged in paragraph 39 of the complaint.
40. WTI admits the factual allegations contained in paragraph 40.
41. WTI admits the factual allegations contained in paragraph 41.
42. WTI denies the factual allegations contained in paragraph 42 for the reasons provided in the portion of this answer titled "Disputed Facts and Circumstances and Arguments that are Alleged to Constitute Grounds of any Defense."

## **Proposed Civil Penalty**

43. The statute speaks for itself. To the extent paragraph 43 contains factual allegations, WTI admits the factual allegations in paragraph 43.
44. To the extent paragraph 44 contains factual allegations, WTI has no information to admit or deny the factual allegations in paragraph 44 except as follows. WTI admits that it was provided with a copy of the penalty policy referenced in paragraph 44 of the complaint.
45. For the reasons contained in the portions of this answer titled "Disputed Facts and Circumstances and Arguments that are Alleged to Constitute Grounds of any Defense" and "Basis for Opposing any Proposed Relief," WTI denies that the civil penalty amount identified in paragraph 45 of the complaint is appropriate. To the extent paragraph 45 contains other factual

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allegations, WTI has no information to admit or deny the remaining factual allegations in paragraph 45.

46. To the extent paragraph 46 contains factual allegations, WTI has no information to admit or deny the factual allegations in paragraph 46.

#### **Rules Governing This Proceeding**

47. The regulations speak for themselves. To the extent paragraph 47 contains factual allegations, WTI admits the factual allegations contained in paragraph 47.

#### **Remaining Portions of the Complaint**

48. The remaining paragraphs in the complaint do not contain factual allegations for which a response is required.

#### **Disputed Facts and Circumstances and Arguments that are Alleged to Constitute Grounds of any Defense**

49. On June 18, 2004, WTI submitted a Notice of Compliance (hereinafter "2004 NOC") containing Operating Parameter Limits (hereinafter "2004 OPLs") to EPA. The 2004 NOC and the 2004 OPLs were based on the results of a 2004 comprehensive performance test ("CPT") which demonstrated compliance with the emission limits, including the dioxin/furan and mercury emission limits, contained in the HWC MACT as that term is defined in the complaint. The 2004 NOC and the 2004 OPLs, as revised by the interim OPLs discussed below, remained in effect until WTI submitted a new NOC on November 19, 2010 containing the results of the September CPT as that term is defined in the complaint (hereinafter "September CPT").

50. The 2004 OPL for chlorine feed rate was 2,828 pounds per hour. The 2004 OPL for carbon injection feed rate was 28 pounds per hour. The 2004 OPL for mercury feed rate was 0.82 pounds per hour which was extrapolated from the 2004 CPT test feed rate of 0.15 pounds per hour. At the time of the 2004 CPT as well as today, EPA allowed facilities like WTI to extrapolate metal feed rates based on the incinerator's removal efficiency.

51. Chlorine feed rate and carbon injection feed rate are two of the primary mechanisms used by WTI to ensure dioxin/furan emissions do not exceed the dioxin/furan emission limit.

52. Mercury feed rate and carbon injection feed rate are two of the primary mechanisms used by WTI to ensure mercury emissions do not exceed the mercury emission limit.

53. On September 2, 2008, WTI requested an extension of the October 2009 deadline to conduct its next CPT.

54. On October 14, 2008, EPA granted WTI's request for an extension and established a new deadline of April 14, 2010 for WTI to conduct its next CPT.

55. As part of the comments provided by EPA on WTI's proposed CPT plan for the Spring CPT, EPA Region 5 made two significant changes to what had been allowed for an acceptable

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CPT plan in 2004. First, EPA Region 5 informed WTI that it would no longer allow extrapolation for mercury based on test results demonstrating removal efficiency. According to EPA, Region 5 had established a policy that it no longer would allow extrapolation for mercury based on demonstrated removal efficiencies. Therefore, WTI was forced to use a mercury feed rate during the Spring CPT that was higher than the mercury feed rate used during the 2004 CPT in an effort to compensate for the loss of the extrapolation option. Second, EPA required WTI to perform mercury spiking for 21 hours prior to performing the mercury portion of the CPT. EPA informed WTI that the basis for requiring mercury spiking was due to allegations that WTI's incineration technology might entrap mercury thereby skewing the CPT results. The mercury spiking required by EPA consisted of adding mercury to the incinerator waste feed stream at an amount equal to 75% of the planned mercury test feed rate for 18 hours and then adding mercury to the incinerator waste feed stream at an amount equal to 100% of the planned mercury test feed rate for 3 hours before the mercury portion of the CPT was performed. WTI objected to the mercury spiking because neither EPA nor the Ohio Environmental Protection Agency ("OEPA") had required mercury spiking for any prior CPT performed by WTI, including the 2004 CPT, and the spiking did not reflect the variability of mercury feed over time at WTI.

56. During the Spring CPT, the chlorine feed rate was 2,828 pounds per hour; carbon injection feed rate was 28 pounds per hour; and mercury feed rate, after the mercury spiking was performed, was 0.25 pounds per hour.

57. On June 14, 2010, WTI received, among other results, the dioxin/furan and mercury results for the Spring CPT.

58. On June 14, 2010, WTI immediately ceased feeding hazardous waste to the incinerator pursuant to the requirements for a failed CPT.

59. After ceasing the feeding of hazardous waste to the incinerator, WTI had a conference call on June 14, 2010 with EPA and OEPA to notify them of the Spring CPT results.

60. During the June 14, 2010 conference call, WTI proposed new interim OPLs which would voluntarily restrict the chlorine feed rate to 700 pounds per hour and increase the carbon injection feed rate to 44 pounds per hour to prevent dioxin/furan emissions in excess of the dioxin/furan emission limit. To prevent mercury emissions in excess of the mercury emission limit, WTI also proposed to voluntarily restrict the mercury feed rate to 0.15 pounds per hour in conjunction with the previously identified increase in carbon injection feed rate.

61. EPA and OEPA verbally approved these revised feed rates and WTI modified its OPLs to implement these revised feed rates on June 14, 2010 prior to resuming the incineration of hazardous waste. WTI documented these revised feed rates in a June 14, 2010 letter to EPA and updated its operating records with a revised Document of Compliance as required by the applicable regulations.

62. On June 17, 2010, in response to concerns raised by EPA concerning the revised mercury feed rate, WTI agreed to further restrict the mercury feed rate to 0.06 pounds per hour to prevent mercury emissions in excess of the mercury emission limit.

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63. EPA verbally approved this further revised feed rate and WTI modified its OPLs to incorporate this revised mercury feed rate. WTI documented this revised feed rate in a June 23, 2010 letter to EPA and updated its operating records with a revised Document of Compliance as required by the applicable regulations.

64. Based on issues raised during the June 30, 2010 meeting discussed in paragraph 28 of the complaint concerning interim operating limits, WTI submitted another letter to EPA on July 2, 2010 requesting approval to operate under interim OPLs to prevent emissions in excess of applicable emission limits, including the dioxin/furan and mercury emission limits.

65. The OPLs identified in the July 2, 2010 letter contained the revised feed rates included as part of the OPLs identified in the June 23, 2010 letter and identified all of the interim OPLs for the incinerator. The OPLs for chlorine feed rate, carbon injection feed rate, and mercury feed rate identified in the July 2, 2010 letter remained at the previously agreed to 700 pounds per hour, 44 pounds per hour, and 0.06 pounds per hour respectively. WTI also updated its operating records with a revised Document of Compliance as required by the applicable regulations.

66. The July 2, 2010 letter also requested an extension of the deadline to submit the Notice of Compliance for the 2010 CPT.

67. On July 16, 2010, EPA approved in writing the interim OPLs identified in WTI's July 2, 2010 letter and WTI updated its operating records with a revised Document of Compliance as required by the applicable regulations.

68. On August 12, 2010, EPA approved in writing the request to extend the deadline to submit the Notice of Compliance.

69. To demonstrate compliance with the interim mercury feed rate OPL, WTI submitted to EPA an initial report that identified mercury feed rates from May 11 through August 1, 2010 and weekly mercury feed rate reports thereafter until November 22, 2010. These weekly reports were required pursuant to EPA's July 16, 2010 letter.

70. During the September CPT which demonstrated compliance with the dioxin/furan and mercury emission limits, the chlorine feed rate was 2,032 pounds per hour; the carbon injection feed rate was 44 pounds per hour; and the mercury feed rate was 0.14 pounds per hour. Prior to performing the mercury portion of the September CPT, mercury spiking again was performed as discussed in paragraph 55 of this answer prior to performing the mercury portion of the September CPT.

71. From the date of the Spring CPT until receipt of the Spring CPT results on June 14, 2010, WTI continued to operate under the terms of its 2004 NOC and 2004 OPLs for chlorine feed rate and carbon injection feed rate. However, the actual chlorine feed rate during that time period was less than the chlorine feed rate used during the Spring CPT. In addition, the carbon injection feed rate during that same time period exceeded the carbon injection feed rate used during the Spring CPT.

72. Because the chlorine feed rate was less than the chlorine feed rate used during the Spring CPT and the carbon injection feed rate exceeded the carbon injection feed rate used during the

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Spring CPT, there is no evidence dioxin/furan emissions exceeded the dioxin/furan emission limit during the time period between the Spring CPT and June 14, 2010.

73. From June 14, 2010 until the September CPT, WTI restricted the chlorine feed rate and increased the carbon injection feed rate as required by the interim agreed to OPLs. As identified above, the chlorine feed rate under the interim OPLs was approximately one-third of the chlorine feed rate at which WTI demonstrated compliance with the dioxin/furan emission limit and the carbon injection feed rate was the same as the carbon injection feed rate used during the September CPT. Therefore, there is no evidence dioxin/furan emissions exceeded the dioxin/furan emission limit during the time period between June 14, 2010 and the September CPT.

74. Consequently, there is no evidence to support EPA's allegation in paragraph 35 of the complaint that WTI exceeded the dioxin/furan emission limit after the Spring CPT.

75. From the date of the Spring CPT until receipt of the Spring CPT results on June 14, 2010, WTI continued to operate under the terms of its 2004 NOC and 2004 OPLs for mercury feed rate. However, the actual mercury feed rate during that time period was less than the mercury feed rate used during the Spring CPT and less than the mercury feed rate used to demonstrate compliance with the mercury emission limit during the September CPT. In addition, the carbon injection feed rate during that same time period exceeded the carbon injection feed rate used during the Spring CPT.

76. Because the mercury feed rate was less than the mercury feed rate used during the Spring CPT, less than the mercury feed rate used during the September CPT, and the carbon injection feed rate exceeded the carbon injection feed rate used during the Spring CPT, there is no evidence mercury emissions exceeded the mercury emission limit during the time period between the Spring CPT and June 14, 2010.

77. From June 14, 2010 until the September CPT, WTI restricted the mercury feed rate and increased the carbon injection feed rate as required by the interim agreed to OPLs. In fact, the actual mercury feed rate during this time period also was below these interim OPLs. Therefore, there is no evidence mercury emissions exceeded the mercury emission limit during the time period between June 14, 2010 and the September CPT.

78. WTI believes the mercury emission limit exceedance observed during the Spring CPT was an artifact of the mercury spiking and the loss of the extrapolation option and not actual operating conditions because: (a) the mercury spiking required during the Spring CPT did not reflect the variability of mercury feed over time at WTI; (b) the mercury spiking was accepted by WTI to obtain EPA's approval of the CPT plan; (c) the mercury spiking was not required for the 2004 CPT during which WTI demonstrated compliance with the mercury emission limit; and (d) the Spring CPT had to be performed at a higher mercury feed rate than was used during the 2004 CPT in an effort to compensate for the loss of the extrapolation option.

79. Therefore, there is no evidence to support EPA's allegation in paragraph 42 of the complaint that WTI exceeded the mercury emission limit from May 11, 2010 through September 15, 2010.

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Basis for Opposing any Proposed Relief

80. As demonstrated in the portion of this answer titled "Disputed Facts and Circumstances and Arguments that are Alleged to Constitute Grounds of any Defense," the proposed civil penalty is excessive, unreasonable, and not supported by the facts.

Request for a Hearing

81. WTI respectfully requests that U.S. EPA, Region 5, withdraw the complaint in this matter based on the information provided in the portion of this answer titled "Disputed Facts and Circumstances and Arguments that are Alleged to Constitute Grounds of any Defense." Otherwise, WTI respectfully requests a hearing in this matter regarding the period of time WTI allegedly failed to comply with the mercury and dioxin/furan emission limits and the proposed civil penalty. In addition, WTI intends to work with the U.S. EPA, Region 5, to determine if informal settlement of this matter is a possibility.

Respectfully submitted,



Michael T. Scanlon, Esq.  
Barnes & Thornburg LLP  
11 South Meridian Street  
Indianapolis, Indiana 46204

Counsel for Heritage-WTI, Inc.

EPA-R5ORC-AE2010-636

CERTIFICATE OF SERVICE

I, Michael T. Scanlon, certify that the original and one copy of Heritage-WTI, Inc.'s Answer to Complaint, Docket No. CAA-05-2011-0012, was hand delivered to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that a correct copy of Heritage-WTI, Inc.'s Answer to Complaint was mailed by first class, postage prepaid, certified mail, return receipt requested, to the following individual who was identified as the U.S. EPA, Region 5, counsel authorized to receive this answer in paragraph 49 of the complaint by placing it in the custody of the United States Postal Service addressed as follows:

John Matson, Associate Regional Counsel  
Office of Regional Counsel  
EPA, Region 5  
77 West Jackson Boulevard (C-14J)  
Chicago, Illinois 60604-3511

on the 26<sup>th</sup> day of January 2011.



Michael T. Scanlon, Esq.  
Barnes & Thornburg LLP

CERTIFIED MAIL RECEIPT NUMBER: 7160 3901 9845 7345 3054

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

DEC 22 2010

REPLY TO THE ATTENTION OF:  
(AE-17J)

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Frank Murray  
Vice President and General Manager  
Heritage-WTI, Inc.  
1250 St. George Street  
East Liverpool, Ohio 43920-3400

Re: In the Matter of Heritage-WTI, Inc. CAA-05-2011-0012  
Docket No. CAA-05-2011-0012

Dear Mr. Murray:

I have enclosed a complaint filed against Heritage-WTI, Inc. under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d). The complaint alleges violations of the National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors, 40 C.F.R. Part 63, Subpart EEE.

As provided in the complaint, if you would like to request a hearing you must do so in your answer to the complaint. Please note that if you do not file an answer with the Regional Hearing Clerk within 30 days of your receipt of this complaint, a default order may be issued and the proposed civil penalty will become due 30 days later.

In addition, whether or not you request a hearing, you may request an informal settlement conference. If you wish to request a conference, or if you have any questions about this matter, please contact, John Matson, Associate Regional Counsel (C-14J), 77 West Jackson Boulevard, Chicago, Illinois 60604, at (312) 886-2243.

Sincerely,

*Michael D. Harris* for C.N.

Cheryl L. Newton  
Director  
Air and Radiation Division

EPA-R50RC-AE2010-638

Enclosures

cc: Robert Hodanbosi, Ohio Environmental Protection Agency

Ed Fasko, Northeast District Office  
Ohio Environmental Protection Agency

EPA-R5ORC-AE2010-639

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF:

Heritage-WTI, Inc.  
East Liverpool, Ohio,

Respondent.

) Docket No. CAA-05-2011- 0012 CAA-05-2011-0012  
)

) Complaint to Assess a Civil Penalty under Section  
) 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d)  
)

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DEC 22 2010

**Complaint**

1. This is an administrative proceeding to assess a civil penalty under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d).  

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY
2. The Complainant is, by lawful delegation, the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5, Chicago, Illinois.
3. The Respondent is Heritage-WTI, Inc. (WTI), a corporation doing business in Ohio.

**Statutory and Regulatory Background**

4. Section 112 of the CAA, 42 U.S.C. § 7412, authorizes the Administrator of EPA (the Administrator, or EPA) to regulate "hazardous air pollutants" that may have an adverse effect on health or the environment.
5. Section 112(f)(4) of the CAA, 42 U.S.C. § 7412(f)(4), prohibits the emission of any air pollutant to which a standard under Section 112 applies from any stationary source in violation of such standard without first obtaining a waiver from EPA.
6. Pursuant to Section 112 of the CAA, 42 U.S.C. § 7412, EPA promulgated the National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors, 40 C.F.R. 63, Subpart EEE, 40 C.F.R. §§ 63.1200 through 63.1221 (HWC MACT), which set forth the standards applicable to the operation of hazardous waste incinerators, among other sources.
7. Under Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3), the Administrator may issue an order requiring compliance to any person who has violated or is violating the HWC MACT. The Administrator has delegated this authority to the Director of the Air and Radiation Division.
8. Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19, authorize EPA to assess a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000 for violations that occurred after January 12, 2009.

### General Allegations

9. WTI was and is a "person" within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602.
10. WTI was and is an "owner" and an "operator" as those terms are defined in Section 112 of the CAA, 42 U.S.C. § 7412, and 40 C.F.R. § 63.2, of a "hazardous waste incinerator," as that term is defined in 40 C.F.R. §§ 260.10 and 63.1201, located at 1250 St. George Street, East Liverpool, Ohio (Incinerator).
11. At all times relevant to this complaint, WTI was subject to the HWC MACT, 40 C.F.R. 63, Subpart EEE, 40 C.F.R. §§ 63.1200 through 63.1221, because it burned hazardous waste in the Incinerator it owns and operates.
12. At all times relevant to this complaint, WTI's Incinerator was an "area source" within the meaning of Section 112(a)(1) of the CAA, 42 U.S.C. § 7412(a)(1), and 40 C.F.R. § 63.2.
13. At all times relevant to this complaint, WTI's Incinerator was an "existing source" within the meaning of the HWC MACT at 40 C.F.R. §§ 63.1201(a) and 63.1206(a)(1)(ii)(B), because it was constructed prior to April 19, 1996.
14. 40 C.F.R. § 63.1207(d) requires an existing source incinerating hazardous waste to conduct periodic and timely comprehensive performance tests (CPT) to, among other things, demonstrate compliance with the emission standards provided by 40 C.F.R. §§ 63.1219 through 63.1221.
15. The compliance date for the HWC MACT for existing hazardous waste incinerators was on or before October 14, 2008, unless EPA grants an extension under 40 C.F.R. §§ 63.6(i) or through 63.1213.
16. Neither EPA nor the Ohio Environmental Protection Agency (Ohio EPA) granted WTI an extension of time under 40 C.F.R. §§ 63.6(i) or through 63.1213 to comply with the emission standards of the HWC MACT.
17. Pursuant to Section 112(l) of the CAA, 42 U.S.C. § 7412(l), Ohio EPA developed and submitted to the Administrator for approval a program for the implementation and enforcement of emission standards and other requirements for air pollutants subject to Section 112 of the CAA, 42 U.S.C. § 7412.
18. On July 11, 2001, EPA delegated to Ohio EPA the authority to implement the HWC MACT in Ohio through its Title V Permit Program. *See* 66 Fed. Reg. 36173 (2001).
19. Ohio EPA's HWC MACT authority under its Title V Permit Program includes, among other things, the authority to approve a CPT, with EPA retaining the right to comment on the proposed CPT.

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20. On December 22, 2008, Ohio EPA issued to WTI a Title V permit.
21. On October 5, 2007, WTI's testing contractor, ENSR/AECOM, submitted a CPT plan and continuous monitoring system (CMS) performance evaluation test (PET) plan for the Incinerator to EPA and Ohio EPA on behalf of WTI.
22. Between April 2, 2008 and February 23, 2010, EPA and Ohio EPA provided comments to WTI on the CPT and CMS PET plans, and WTI submitted revisions to EPA and Ohio EPA addressing their comments.
23. On March 16, 2010, Ohio EPA approved the CPT and CMS PET plans as revised on February 4 and 23, 2010.
24. On March 30 and 31, April 1 and 2, and May 11 and 12, 2010, WTI conducted the CPT (Spring CPT) for the Incinerator, as required by 40 C.F.R. § 63.1207.
25. On June 14, 2010, WTI received the preliminary CPT results from ENSR/AECOM, its testing contractor, and forwarded them to EPA and Ohio EPA.
26. On June 18, 2010, EPA issued to WTI a Finding of Violation for violations of HWC MACT emission standards during the CPT.
27. On June 23, 2010, Ohio EPA issued to WTI a Notice of Violation for violations of HWC MACT emission standards during the CPT.
28. On June 30, 2010, EPA and WTI representatives met to discuss the violations and WTI's June 14, 2010, request for interim operating parameter limits. Ohio EPA representatives joined the conference by telephone.
29. On September 15 and 16, 2010, WTI conducted a re-test CPT (September CPT) to demonstrate compliance with the dioxin/furan and mercury emission standards in the HWC MACT.

#### Count I

30. Complainant incorporates paragraphs 1 through 29 of this complaint, as if set forth fully in this paragraph.
31. Pursuant to 40 C.F.R. § 63.1219(a)(1)(i)(A), the owner or operator of an existing hazardous waste incinerator equipped with a waste heat boiler must not discharge or cause combustion gases to be emitted into the atmosphere that contain dioxins and furans in excess of 0.20 nanogram toxic equivalent per dry standard cubic meter, corrected to 7 percent oxygen (ng TEQ/dscm @ 7% O<sub>2</sub>).
32. At all times relevant to this complaint, WTI's Incinerator was equipped with a waste heat boiler.

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33. On May 11 and 12, 2010, WTI conducted a dioxin/furan performance test as part of the Spring CPT, using EPA Publication SW-846 Method 0023A. The average dioxin/furan emission concentration during the dioxin/furan performance test was 0.518 ng TEQ/dscm @ 7% O<sub>2</sub>.
34. On September 15 and 16, 2010, WTI conducted a dioxin/furan performance test as part of the September CPT, using EPA Publication SW-846 Method 0023A. The average dioxin/furan emission concentration during the September CPT was 0.0086 ng TEQ/dscm @ 7% O<sub>2</sub>.
35. For the period from May 11, 2010 until September 15, 2010, WTI violated 40 C.F.R. § 63.1203(a)(1)(i)(A) and Section 112(f)(4) of the CAA, 42 U.S.C. § 7412(f)(4), by discharging into the atmosphere combustion gases containing dioxin/furan in excess of the standards set forth at 40 C.F.R. § 63.1219(a)(1)(i)(A).

## Count II

36. Complainant incorporates paragraphs 1 through 29 of this complaint, as if set forth in this paragraph.
37. Pursuant to 40 C.F.R. § 63.1219(a)(2), the owner or operator of an existing hazardous waste incinerator must not discharge or cause combustion gases to be emitted into the atmosphere that contain mercury in excess of 130 micrograms per dry standard cubic meter, corrected to 7 percent oxygen (µg/dscm @ 7% O<sub>2</sub>).
38. On May 11, 2010, WTI conducted a metals performance test as part of the Spring CPT, using Reference Method 29 in 40 C.F.R. 60, Appendix A.
39. The average mercury emission concentration during the Spring CPT was 290.7 µg/dscm @ 7% O<sub>2</sub>.
40. On September 15, 2010, WTI conducted a metals performance test as part of the September CPT, using Reference Method 29 in 40 C.F.R. 60, Appendix A.
41. The average mercury emission concentration during the September CPT was 7.04 µg/dscm @ 7% O<sub>2</sub>.
42. For the period from May 11, 2010 through September 15, 2010, WTI violated 40 C.F.R. § 63.1219(a)(2) and Section 112(f)(4) of the CAA, 42 U.S.C. § 7412(f)(4), by discharging into the atmosphere combustion gases containing mercury in excess of the standards set forth at 40 C.F.R. § 63.1219(a)(2).

### **Proposed Civil Penalty**

43. The Administrator must consider the factors specified in Section 113(e) of the CAA when assessing an administrative penalty under Section 113(d). 42 U.S.C. § 7413(e).
44. Complainant evaluated the facts and circumstances of this case with specific reference to EPA's Clean Air Act Stationary Source Penalty Policy dated October 25, 1991 (Penalty Policy). Enclosed with this complaint is a copy of the penalty policy.
45. Based upon an evaluation of the facts alleged in this complaint and the factors in Section 113(e) of the CAA, Complainant proposes that the Administrator assess a \$151,800 civil penalty against Respondent.
46. Complainant developed the proposed penalty based on the best information available to Complainant at this time. Complainant may adjust the proposed penalty if the Respondent establishes a bona fide issue of its ability to pay, or other defenses relevant to the appropriateness of the penalty.

### **Rules Governing This Proceeding**

47. *The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (the Consolidated Rules) at 40 C.F.R. Part 22 (2010) govern this proceeding to assess a civil penalty. A copy of the Consolidated Rules is enclosed with the complaint served on Respondent.

### **Filing and Service of Documents**

48. Respondent must file with the Regional Hearing Clerk the original and one copy of each document Respondent intends to include as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (E-19J)  
EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3511

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49. Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Associate Regional Counsel John Matson to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Mr. Matson at (312) 886-2243. Mr. Matson's address is:

John Matson, Associate Regional Counsel  
Office of Regional Counsel  
EPA, Region 5  
77 West Jackson Boulevard, (C-14J)  
Chicago, Illinois 60604-3511

#### **Penalty Payment**

50. Respondent may resolve this proceeding at any time by paying the proposed penalty by certified or cashier's check payable to "Treasurer, the United States of America," and by delivering the check to:

U.S. Environmental Protection Agency  
Region 5  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

Respondent must include the case name and docket number on the check and in the letter transmitting the check. Respondent simultaneously must send copies of the check and transmittal letter to John Matson and to:

Attn: Compliance Tracker, (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3511

#### **Opportunity to Request a Hearing**

51. The Administrator must provide an opportunity to request a hearing to any person against whom the Administrator proposes to assess a penalty under Section 113(d)(2) of the CAA, 42 U.S.C. § 7413(d)(2). Respondent has the right to request a hearing on any material fact alleged in the complaint, or on the appropriateness of the proposed penalty, or both. To request a hearing, Respondent must specifically make the request in its answer, as discussed in paragraphs 52 through 57 below.

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### Answer

52. Respondent must file a written answer to this complaint if Respondent contests any material fact of the complaint; contends that the proposed penalty is inappropriate; or contends that it is entitled to judgment as a matter of law. To file an answer, Respondent must file the original written answer and one copy with the Regional Hearing Clerk at the address specified in paragraph 48, above.
53. If Respondent chooses to file a written answer to the complaint, it must do so within 30 calendar days after receiving the complaint. In counting the 30-day time period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.
54. Respondent's written answer must clearly and directly admit, deny, or explain each of the factual allegations in the complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied.
55. Respondent's failure to admit, deny, or explain any material factual allegation in the complaint constitutes an admission of the allegation.
56. Respondent's answer must also state: (a) the circumstances or arguments which Respondent alleges constitute grounds of defense; (b) the facts that Respondent disputes; (c) the basis for opposing the proposed penalty; and (d) whether Respondent requests a hearing as discussed in paragraph 51 above.
57. If Respondent does not file a written answer within 30 calendar days after receiving this complaint the Presiding Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules. Default by Respondent constitutes an admission of all factual allegations in the complaint and a waiver of the right to contest the factual allegations. Respondent must pay any penalty assessed in a default order without further proceedings 30 days after the order becomes the final order of the Administrator of EPA under Section 22.27(c) of the Consolidated Rules.

### Settlement Conference

58. Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of this proceeding and to arrive at a settlement. To request an informal settlement conference, Respondent may contact John Matson at the address or phone number specified in paragraph 49, above.

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59. Respondent's request for an informal settlement conference does not extend the 30 calendar day period for filing a written answer to this complaint. Respondent may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. EPA, however, will not reduce the penalty simply because the parties hold an informal settlement conference.

**Continuing Obligation to Comply**

60. Neither the assessment nor payment of a civil penalty will affect Respondent's continuing obligation to comply with the CAA and any other applicable federal, state, or local law.

12/22/10

Date

Michael D. Harris for C.N.

Cheryl L. Newton

Director

Air and Radiation Division

U.S. Environmental Protection Agency

Region 5

77 West Jackson Boulevard

Chicago, Illinois 60604-3511

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PROTECTION AGENCY

EPA-R5ORC-AE2010-647

In the Matter of: Heritage - WTI, Inc.  
Docket No: CAA-05-2011-0012

**CERTIFICATE OF SERVICE**

I, Betty Williams, certify that I hand delivered the original and one copy of the Administrative Complaint, docket number CAA-05-2011-\_\_\_\_ to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies of the Administrative Complaint, copies of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits* at 40 C.F.R. Part 22, and copies of the penalty policy described in the Administrative Complaint by first-class, postage prepaid, certified mail, return receipt requested, to the Respondent and Respondent's Counsel by placing them in the custody of the United States Postal Service addressed as follows:

Frank Murray  
Vice President and General Manager  
Heritage-WTI, Inc.  
1250 St. George Street  
East Liverpool, Ohio 43920-3400

Michael Scanlon, Esq.  
Barnes & Thornburg LLP  
11 South Meridian Street  
Indianapolis, Indiana 46204-3535

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DEC 22 2010  
REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

on the 22nd Day of December 2010

Betty Williams  
Betty Williams  
Administrative Program Assistant  
Planning Administration Section

CERTIFIED MAIL RECEIPT NUMBER: 7009 1680 0000 7666 5391

EPA-R5ORC-AE2010-648

HERITAGE-WTI, INC.  
1250 St. George Street  
East Liverpool, Ohio 43920-3400  
Phone: 330-385-7337  
Fax: 330-385-7813  
Web Site: [www.heritage-wti.com](http://www.heritage-wti.com)

OHSAS 18001: 2007  
ISO 14001: 2004  
ISO 9001: 2008

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

John Matson  
Associate Regional Counsel  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

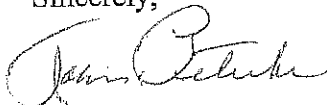
Re: *In the Matter of Heritage-WTI, Inc.*  
Docket No. CAA-05-2011-0012

Dear Mr. Matson:

I have enclosed three copies of the Consent Agreement and Final Order ("CAFO") to resolve this civil administrative action without resort to hearing. I trust that you will gather signatures from authorities within EPA and then return fully executed copies to Mr. Mike Scanlon, Ed Fasko, and me.

If you have any questions on this matter, please do not hesitate to call me at 330.386.2122.

Sincerely,



John Peterka  
Heritage-WTI, Inc.

Enclosure:  
Michael Scanlon, Barnes & Thornburg  
Ed Fasko, Ohio EPA  
Carrie Beringer

EPA-R5ORC-AE2010-649



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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

|                      |   |                                       |
|----------------------|---|---------------------------------------|
| IN THE MATTER OF:    | ) | Docket No. CAA-05-2011-0012           |
|                      | ) |                                       |
| Heritage-WTI, Inc.   | ) | Proceeding to Assess a Civil Penalty  |
| East Liverpool, Ohio | ) | under Section 113(d) of the Clean Air |
|                      | ) | Act, 42 U.S.C. § 7413(d)              |
| Respondent.          | ) |                                       |
| _____                | ) |                                       |

**CONSENT AGREEMENT AND FINAL ORDER**

1. Complainant, the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5, brought this administrative action seeking a civil penalty under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d).

2. On December 22, 2010, EPA filed the Complaint in this action against Respondent, Heritage-WTI, Inc. (WTI). The Complaint alleged that Respondent violated Section 112(f)(4) of the Act, 42 U.S.C. § 7412(f)(4), and the dioxin/furan and mercury emission limits in the National Emission Standard for Hazardous Air Pollutants from Hazardous Waste Combustors (HWC MACT) set forth at 40 C.F.R. § 63.1219(a)(1)(i)(A), and 40 C.F.R. § 63.1219(a)(2), at its facility in East Liverpool, OH.

3. Respondent filed an Answer and requested a hearing under Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2).

4. On June 28, 2011, EPA filed its First Amended Complaint re-alleging WTI's original violations, but modifying the time period for WTI's violation of the HWC MACT dioxin/furan and mercury emission limits.

5. Complainant and Respondent wish to settle Respondent's liability for federal civil penalties for the violations and facts alleged in the First Amended Complaint, and have consented to the entry of this Consent Agreement, and the accompanying Final Order (CAFO).

#### Stipulations

6. Respondent admits the jurisdictional allegations in the First Amended Complaint and neither admits nor denies the factual allegations in the First Amended Complaint.

7. Respondent waives any right to contest the allegations in the First Amended Complaint and its right to appeal the Final Order accompanying the Consent Agreement.

8. Respondent certifies that it is complying fully with the National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors, 40 C.F.R. Part 63, Subpart EEE, 40 C.F.R. §§ 63.1200 through 63.1221.

9. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms and conditions of this CAFO.

10. The parties agree that settling this action without further litigation, upon the terms in this CAFO, is in the public interest.

### Civil Penalty

11. In consideration of Respondent's self-reporting of the violations, its cooperation in establishing interim operating parameter limits until it could demonstrate compliance, the size of Respondent's business, and Respondent's agreement to perform a supplemental environment project, Complainant agrees to mitigate the proposed penalty of \$151,800 to \$50,100.

12. Within 30 days after the effective date of this CAFO, Respondent must pay the \$50,100 civil penalty by electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York  
ABA No. 021030004  
Account No. 68010727  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read:  
"D68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state *In re Heritage-WTI, Inc.*, the docket number of this CAFO, CAA-05-2011-0012, and the billing document number.

13. Respondent must send a notice of payment that states *In re Heritage-WTI, Inc.*, the docket number of this CAFO, CAA-05-2011-0012, and the billing document number, to the Compliance Tracker, Air Enforcement and Compliance Assurance Branch and to John Matson, at the following addresses when it pays the civil penalty:

EPA-R5ORC-AE2010-652

Attn: Compliance Tracker (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. EPA, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

John Matson (C-14J)  
Associate Regional Counsel  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

14. This civil penalty is not deductible for federal tax purposes.

15. If Respondent does not pay timely the civil penalty, or any stipulated penalties due under paragraph 27, below, EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

16. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent

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of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

**Supplemental Environmental Project**

17. Respondent shall implement a Supplemental Environmental Project ("SEP") in the fall of 2011. Respondent shall sponsor one collection of household hazardous waste at a satellite location no farther than 25 miles from its hazardous waste incineration facility in East Liverpool, Ohio ("Fall 2011 SEP"). The Fall 2011 SEP shall be in addition to the collection effort that Respondent routinely sponsors in the spring of each year. Respondent shall collect, process, recycle, and/or dispose of the household hazardous wastes consistent with all applicable legal requirements. The cost of this project which WTI shall pay shall be no less than \$53,000.

18. Respondent must complete the Fall 2011 SEP as described in Exhibit A of this CAFO. Respondent must not cause the unpermitted or unauthorized release to the environment of any mercury, or any other toxic or hazardous chemical during the performance of the SEP. The Fall 2011 SEP will reduce the amount of mercury, plastic (which contain precursors for dioxin/furan emissions), and other household hazardous waste, being landfilled by households in the vicinity of the East Liverpool, Ohio facility.

19. Respondent certifies that it is not required to perform or develop the Fall 2011 SEP by any law, regulation, grant, order, or agreement or as injunctive relief as of the date it signs this CAFO. Respondent further certifies that it has not received, and is not negotiating to receive, credit for the Fall

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2011 SEP in any other enforcement action. Finally, Respondent certifies that it is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the Fall 2011 SEP. Respondent further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the Fall 2011 SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired.

20. Respondent is responsible for the satisfactory completion of the Fall 2011 SEP in accordance with the requirements of this CAFO.

21. EPA may inspect the East Liverpool, Ohio facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

22. Respondent must submit a SEP completion report to EPA no later than 30 days after the date the Fall 2011 SEP occurs. This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any operating problems and the actions taken to correct the problems;
- c. Itemized cost of goods and services used to complete the SEP, documented by copies of invoices, purchase orders or canceled checks that specifically identify and itemize the individual cost of the goods and services;
- d. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

23. Respondent must submit all notices and reports required by this CAFO by first class mail to the Compliance Tracker in the Air Enforcement and Compliance Assurance Branch at the address provided in paragraph 13, above.

24. In any report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

25. Following receipt of the SEP completion report described in paragraph 22, above, EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the Fall 2011 SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the Fall 2011 SEP or the SEP report and EPA will seek stipulated penalties under paragraph 27.

26. If EPA exercises option b, above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any requirement that EPA imposes in its decision. If Respondent does not complete the Fall 2011 SEP as required by EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 27, below.

27. If Respondent violates any requirement of this CAFO relating to the Fall 2011 SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. Except as provided in subparagraph b, below, if Respondent did not complete the Fall 2011 SEP satisfactorily according to the requirements of this CAFO, Respondent must pay a stipulated penalty of \$30,000;
- b. If Respondent did not complete the Fall 2011 SEP satisfactorily, but EPA determines that Respondent made good faith and timely efforts to complete the Fall 2011 SEP and certified, with supporting documents, that it spent at least 90 percent of the amount set forth in paragraph 17, Respondent will not be liable for any stipulated penalty under subparagraph a, above;

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- c. If Respondent completed the Fall 2011 SEP satisfactorily, but spent less than 90 percent of the amount set forth in paragraph 17, Respondent must pay a penalty in the amount of 90% of the amount by which the Fall 2011 SEP fell short of \$53,000;
- d. If Respondent did not submit timely the SEP completion report required by paragraph 22, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

| <u>Penalty per violation per day</u> | <u>Period of violation</u> |
|--------------------------------------|----------------------------|
| \$ 200                               | 1st through 14th day       |
| \$ 500                               | 15th through 30th day      |
| \$1,000                              | 31st day and beyond        |

28. EPA's determinations of whether Respondent satisfactorily completed the Fall 2011 SEP and whether Respondent made good faith and timely efforts to complete the Fall 2011 SEP will bind Respondent.

29. Respondent must pay any stipulated penalties within 15 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraph 12, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

30. Any public statement that Respondent makes referring to the Fall 2011 SEP must include the following language, "WTI undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against WTI for violations of National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors, 40 C.F.R. Part 63, Subpart EEE."

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31. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any cost or expenditures incurred in performing the Fall 2011 SEP.

#### General Provisions

32. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the First Amended Complaint.

33. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

34. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state, and local laws. Except as provided in paragraph 32, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

35. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Source Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

36. The terms of this CAFO bind Respondent, its successors, and assigns.

37. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.


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38. Each party agrees to bear its own costs and attorney's fees in this action.

39. This CAFO constitutes that entire agreement between the parties.

**Heritage-WTI, Inc., Respondent**

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
John A. Peterka, President  
Heritage-WTI, Inc.

**United States Environmental Protection Agency, Complainant**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Cheryl L. Newton  
Director  
Air and Radiation Division  
U.S. Environmental Protection Agency  
Region 5

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Consent Agreement and Final Order  
In the Matter of: Heritage-WTI, Inc.  
Docket No. CAA-05-2011-0012

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Susan Hedman  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 5

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Consent Agreement and Final Order  
In the Matter of: Heritage-WTI, Inc.  
Docket No. CAA-05-2011-0012

Certificate of Service

I certify that I filed the original and one copy of the Consent Agreement and Final Order (CAFO), docket number CAA-05-2011-0012 with the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604, and that I mailed a second original copy by first-class, postage prepaid, certified mail, return receipt requested, by placing it in the custody of the United States Postal Service addressed as follows:

John Peterka  
President  
Heritage-WTI, Inc.  
1250 St. George Street  
East Liverpool, Ohio 43920-3400

Michael Scanlon, Esq.  
Barnes & Thornburg LLP  
11 South Meridian Street  
Indianapolis, Indiana 46204-3535

I certify that I mailed copies of the CAFO by first-class mail, addressed as follows:

Robert Hodanbosi, Chief  
Division of Air Pollution Control  
Ohio Environmental Protection Agency  
50 West Town Street, Suite 700  
Columbus, Ohio 43215

Ed Fasko, Air Pollution Control Supervisor  
Northeast District Office  
Ohio Environmental Protection Agency  
2110 East Aurora Road  
Twinsburg, Ohio 44087

Honorable Susan L. Biro  
Chief Administrative Law Judge  
U.S. Environmental Protection Agency  
Ariel Rios Building/Mail Code 1900L  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20460

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I also certify that I delivered a copy of the CAFO by intra-office mail, addressed as follows:

Marcy Toney  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard/Mail Code C-14J  
Chicago, Illinois 60604

on the \_\_\_\_\_ day of \_\_\_\_\_ 2011

\_\_\_\_\_  
Administrative Program Assistant

Certified Mail Receipt Number: \_\_\_\_\_

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

AUG 12 2010

(AE-17J)

Mr. Frank Murray  
Vice President and General Manager  
Heritage-WTI, Inc.  
1250 St. George Street  
East Liverpool, Ohio 43920

RE: Comprehensive Performance Test Plan for Heritage-WTI, Inc.,  
East Liverpool, Ohio

Dear Mr. Murray:

On July 1, 2010, Heritage-WTI, Inc. (WTI), requested a 90-day extension of the deadline for submitting its Notification of Compliance (NOC). For the reasons stated below, the United States Environmental Protection Agency approves your request.

As you know, on May 12, 2010, WTI completed a comprehensive performance test (CPT) in an attempt to demonstrate compliance with the emission standards in 40 C.F.R. §§ 63.1219(a) and 63.1219(c) of the National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors, 40 C.F.R. 63, Subpart EEE (hereinafter, "the HWC MACT"). On June 14, 2010, WTI notified the United States Environmental Protection Agency and the Ohio Environmental Protection Agency (Ohio EPA) that WTI did not demonstrate compliance with the dioxin/furan and mercury emission standards in 40 C.F.R. § 63.1219(a)(1)(i)(A) and 40 C.F.R. § 63.1219(a)(2), respectively. On June 14, 2010, WTI requested interim operating parameter limits (OPLs) pursuant to 40 C.F.R. § 63.1207(1)(3).

On June 18, 2010, U.S. EPA issued a Finding of Violation for the violations of the dioxin/furan and mercury emission standards. On June 23, 2010, Ohio EPA issued a Notice of Violation. On June 30, 2010, EPA and WTI representatives met to discuss the violations and WTI's request for interim OPLs. Ohio EPA representatives joined the conference by telephone. On July 2, 2010, WTI revised its request for interim OPLs. On July 16, 2010, U.S. EPA approved WTI's revised request for interim OPLs.

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On July 1, 2010, pursuant to 40 C.F.R. § 63.1207(j)(4), WTI requested a 90-day extension of the deadline for submitting its NOC. WTI explained that its test contractor would not be available to conduct a re-test until late August or early September. Consequently, WTI would not be able to conduct the test and analyze the samples prior to August 11, 2010, the due date for the NOC. U.S. EPA concludes that this is an appropriate reason to grant an extension to submit a NOC. WTI has scheduled the re-test for the week of September 13, 2010. WTI must now submit its NOC within 90 days of completing the re-test.

Please direct any questions regarding this letter to Charles Hall of my staff at (312) 353-3443.

Sincerely yours,



George Czerniak, Chief  
Air Enforcement and Compliance Assurance Branch

cc: Pam Korenewych, Ohio EPA, Northeast District Office